

1895-059 Chancery Causes: A. P. Witt vs William y. Tucker
Lee Co.

Ball, Thompson, Jones, Seale, Baylor, Barker

CA-Contract Dispute
T-Property

-Deed

To the Honorable H.S.K. Morison, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining, your Orator, A.P. Witt, will respectfully show to your Honor, That heretofore, to wit, on the 13th day of December 1890, he sold to one William Y. Tucker a tract of land situated in the County of Lee, containing one hundred acres, adjoining the lands of William Cavwood, Hiram Howard, N. Davis and others, near Boons Path in said County, being a portion of the Samuel Shelburn tract, for the price of \$1400.00, and in consideration of the payment of said sum your orator bound himself to make or cause to be made a good and sufficient deed to said amount of land. At the time of said sale the said Tucker paid down to your orator the sum of six hundred dollars (\$600.00); the residue was to be paid on such terms as should be agreed upon by the parties concerned, i.e. your orator and the said W.Y. Tucker, all of which will more fully appear by reference to the title bond executed by your orator to the said Tucker, a copy of which is herewith filed as part hereof marked "A".

Your orator will now show your honor that on the said 13th day of December 1890 your orator and the said Tucker agreed on the terms upon which the deferred payments should be made, and in accordance therewith the said Tucker then and there executed his said three writings obligatory for the payment of \$100.00 each, the first of which was at twelve months after date, the second at twenty-four months after date, and the third at thirty six months after date and each bearing interest from date, all of which will more fully and at large appear by reference to said three notes which are here filed ^{as part hereof,} marked "B". And at the same time the said Tucker executed his further writing obligatory by which he bound himself to work twelve months, 26 days constituting a month, for ~~the~~ your orator or any other person that they might agree upon, which said years work was valued by your orator and the said Tucker at \$500.00, all of which will more fully appear by reference to said last named writing obligatory which is herewith filed as part hereof marked "C".

6-10-13
38
Your orator will now show your honor that on said \$500.00 obligation last aforesaid the said Tucker has done work for him to the amount of \$239.53, which is endorsed as a credit on the back of said obligation. The remainder of said \$500.00 which your orator is advised he may now collect in money instead of work and said three notes of \$100.00 each is unpaid due and owing to your orator.

Your orator will further show your honor that he has made and executed a good and sufficient ^{deed} to the said Tucker for the said tract of land with covenants of general warranty, and files the same herewith as an escrow to be delivered to the said Tucker upon the payment of the balance which is due to him on the purchase price on said tract of land. Said deed is marked "D" and prayed to be considered as part hereof.

Now the object of this bill is to have specifically executed said contract aforesaid and to collect from the said Tucker the balance of the purchase money which is due to him on said sale, and to enforce the same by a sale of the said land if necessary, there being no other lien on said land as your orator avers. And being without remedy at law he prays your honor's court of chancery to take cognisance of his cause and grant him the proper relief.

To this end he prays that William Y. Tucker be made the party defendant to this bill, and that he be required to answer its several allegations, but he need not answer upon his oath, that being waived, and that, upon a hearing, the said contract be specifically performed, that the said Tucker be required to pay the residue of the purchase price of the said tract of land, and if he does not do so in a reasonable time then that the said tract of land or enough thereof to pay the same be sold for that purpose. And if mistaken in his special prayer, then he prays for full general relief.

May spa. in chancery issue directed &c.

G. Mearns & Hyatt, p.g.

Plffs Costs
recovered C \$4.76
S 50
wits 206
Comr 50.00
atty 15.00
\$72.32

Defts Costs
C 65-
wits 622
\$6.87

1st February Rules 1894

A.P. Witt.

vs. Bill in Chancery.

William V. Tucker.

Duncan & Hyatt, p.c.

Filed this Feb. 7th 1894

1894 1st Febr Rules Bill
filed S & A Ex D & D. V. M.

" 2nd Febr Rules Decisi
Confd Cause set for
hearing by Pff

" March Decree contd
" June Decree final
O.B 4 O. 20 June 1st
1894.

" Novr Contd

1895 March Term Decree
final see Cheyond
Book Page 134

\$500.00

Dec. 13th 1890.

For value received in land I promise
to work twelve months ^{up to} for
him or for any one that they may
agree on — 26 days constituting a
month

Witness my hand & seal

W. J. Tucker

(Seal)

W. J. Linker

Dec 29-1890.

Cr. #239.53

11-20

13

247

12

135

"D."

47

414

857

111

227

This Dec. 13th 1890

(\$100.00)

Dec. 13th 1890.

Twelve months after date I ~~bind~~ myself
my heirs &c. to pay A. P. Witt one hundred
dollars with int. from date for value
received of him in land, the land
standing good for the payment of this note
witness my hand & seal

W. Y. Tucker (Seal)

(\$100.00)

Dec. 13th 1890

Twentyfour months after date I bind
myself my heirs &c. to pay A. P. Witt
one hundred dollars ^{with int. from date} for value received
of him in land; and the land standing
good for the payment of this note
Witness my hand & seal

W. Y. Tucker (Seal)

(\$100.00)

Dec. 13th 1890.

Thirtyset months after date I ~~bind~~
myself my heirs &c. to pay A. P. Witt
one hundred dollars ^{with int.} for value
received of him in land, the land
standing good for the payment of
this note

Witness my hand & seal

W. Y. Tucker (Seal)

B''

1 To The Honorable H. S. H. Morrison,
2 Judge of the Circuit Court of Lee Co., Va.:

3 The Answer of Wm. J.
4 Tucker to a bill of Complaint filed
5 in this Honorable Court, by A. P.
6 Witt.

7 For answer says, that it is true
8 your respondent purchased of the
9 Complainant a tract of land
10 for the price of \$1400⁰⁰ & paid down
11 \$600⁰⁰ & gave notes for the deferred
12 payments as alleged in Complainant's
13 Bill - amounting to the sum of
14 \$800⁰⁰ - \$500⁰⁰ of which was to be
15 discharged in labor; but it is not
16 true that said amount of \$800⁰⁰ or
17 any part thereof remains due or
18 unpaid to the Complainant; but
19 upon the contrary upon a fair &
20 just settlement he will be largely
21 indebted to your respondent as will
22 be seen from an itemized account
23 herewith filed marked "Act." & prayed to
24 be considered a part of this answer,
25 which indebtedness arose in this manner,
26 to wit: your respondent soon after
27 the purchase of the land aforesaid, by an
28 agreement with the Complainant moved
29 into a dwelling house of his & had the
30 use of barn, outbuildings, orchard & garden,
31 free of rent for twelve months, and the
32 Complainant afterwards (about two or three

1 months after your respondent had moved in
2 said dwelling house & used same re.) desired the
3 possession of the same & agreed with your
4 respondent if he would give the possession
5 that he would allow him for the time it re-
6 quired in erecting temporary buildings the
7 rates as was agreed upon in the \$500⁰⁰
8 note, to wit = \$500⁰⁰ per year for his services, which
9 was well worth the \$100⁰⁰; the work for
10 six months ^{lasting} & one day needs no further
11 explanation as it was an agreement; the
12 third article - Damage done to grass - was caused
13 by the carelessness of the said ^{Witt} in having
14 timber hauled through the fields & leaving
15 down fences - the fourth item - for board
16 was while he was laboring for him at
17 Mossy Creek; the 5th to the 12th, inclusive
18 explains themselves - the 80000 feet of timber
19 was sold to C. E. Baylor by the said Witt
20 & was not reserved when the trade
21 was made for the land & respondent
22 is informed & believes that it was
23 sold subsequent to said land trade -
24 (The amount of timber is an estimate by
25 the men who worked it); The charge of
26 \$50.00 paid Jackson & Blankenship, as
27 well as the \$25⁰⁰ for expenses,
28 were expended in the suit in this Hon-
29 orable Court of S. C. Beatty vs.
30 P. P. Witt, et al. for the purchase price
31 of the land sold your respondent
32 & which was due from said

1 with to his Vendor, the said S. C. Beatty.
2 & which your respondent was forced to
3 pay & expend in order to protect his
4 interest in the same. - Lawrence is now
5 made to said Suit.

6 Your respondent prays that your Honor
7 will consider this as an answer, Cross
8 Bill or an Original Bill, so that such
9 relief may be granted him as he may
10 be entitled to in a Court of Equity.

11 He prays that an account may
12 be taken & that the said Witt may
13 be required by proper orders & Decrees
14 of this Court to pay such sum as
15 may be ascertained to be due your
16 respondent, and he prays for all
17 such other, further & General relief
18 as may be suited to the merits of
19 his Cause.

20 Jackson & Blackwelder, J. J.
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Wm Y. Luckey,
ad^o ^{Doc} Answer

A. P. Witt,

Filed March the 8th 1894
open Court
A. B. Munsay Clk

A.P.Witt,

Plaintiff.

vs.

In chancery.

W.Y.Tucker,

Defendant.

This cause came on again this day to be heard upon the papers formerly read herein, and the report of L.T.Hyatt, special commissioner, and was argued by counsel. On consideration whereof it is adjudged ordered and decreed that said report be and the same is hereby confirmed. And it appearing from said report that all the money for which said land of said Tucker was decreed to be rented has been fully paid, and that said plaintiff has made and executed to the said defendant a good and satisfactory deed for land ~~land~~, and there being nothing further to be done in said cause, it is stricken from the docket. The said Tucker shall have the right to withdraw said deed from the files of said cause by leaving a copy thereof therein.

A. P. Witt,

13. ³ Decree
final.

W. Y. Tucker

C.B.

Page 154

Enter this decree

M IM

March 8th 1895-

A.P.Witt

Plaintiff

vs.

In chancery.

W.Y.Tucker.

Defendant.

This cause came on this day to be again heard upon the papers formerly read, and the report of ~~commissioner~~, John A.G. Hvatt, and statements "G", "O" and "XY" filed therewith, and exceptions filed by both complainant and defendant to said report. *and was argued by Counsel.* On consideration whereof it is adjudged ordered and decreed that said exceptions and each of them be and the same are hereby overruled, and it is further adjudged ordered and decreed that said report and statement "XY" filed therewith be and the same are hereby confirmed, and it is further adjudged ordered and decreed that the plaintiff recover of the defendant the sum of four hundred and forty-two dollars and twenty-three cents (\$442.23) with legal interest thereon from the 6th day of March 1893 till paid, and the costs of this suit. And it further adjudged ordered and decreed that unless the defendant or some one for ^{him} shall, within thirty days from the rising of this court, pay to the plaintiff said sum of money with its interest and the costs of this suit, then L.T.Hvatt, who is appointed a commissioner for the purpose, shall proceed to sell the land in the bill and proceedings mentioned or enough thereof to pay said debt interest and costs, and the costs and commissions of sale. Said sale shall be made at the front door of the Court-house on some court day, to the highest bidder, on a credit of six, twelve and eighteen months, except a sum sufficient to pay costs of suit and commissions of sale which he will require to be paid down in cash. For the deferred payments said commissioner will take bonds payable to himself ^{himself} as commissioner with good security, bearing interest from day of sale. Before proceeding to make said sale said commissioner will advertise the time, place and terms thereof for at least thirty days by posting written notices thereof at three or more public places, one of which shall be upon the Court house door, and the others in the neighborhood where said land lies, but before proceeding

to discharge any of the duties required of him by this decree
said commissioner will execute bond before the Clerk of this
Court in the penalty of \$1000.00 conditioned to faithfully dis-
charge all the duties required of him as commissioner, and to
account for and pay over all sums of money received by him as ~~such~~
such. He will report his action to a future term of this court
And the cause is continued.

A. P. Witt

vs Deane

W. Y. Lueder

For sales &c.

Ent. ore Copy. Ord. Book 4 P. 20

Enter this decree

M. J. M.

June 12th 1894.

A.P. Witt

Plaintiff.

vs.

In chancery

Wm. Y. Tucker

Defendant.

This cause came on this day to be heard upon the bill of the plaintiff and exhibits therewith filed, the answer of the defendant and exhibit therewith, and was argued by counsel. On consideration whereof it is adjudged, ordered and decreed that John A. G. Hyatt who is appointed a commissioner for the purpose do take and state an account between the plaintiff and the defendant, charging the said defendant with \$1400.00, the purchase price of said tract of land, and giving to him credit for all sums to which he shows himself entitled. Said commissioner will reduce to writing and file with his report all evidence taken or heard by him, and will report his conclusion thereon to the next term of this court. Before proceeding to discharge the duties herein required of him said commissioner will give to each of said parties at least 10 days notice of the time and place of his sitting, and this cause is continued.

or admitted by the complainant

A. P. Witt,

vs. $\frac{1}{2}$ Deere No. 1.

Wm Y. Tucker

E. O. B. Page 558,

Mar 9th 1894

Enter this

March 9th 1894.

N S K M

1st

Commissioners Office
May 3rd 1894

A. P. Witt

vs
Wm. Y. Tucker

The depositions of W. Y. Tucker
and others
taken at the time of taking an
account in the above styled
Cause, introduced by, and inter-
ded to be read as evidence on
behalf of the Defendant

Present Plff and Defendants, with their
attorneys

Wm. Y. Tucker a witness of lawful age
being duly sworn deposes as says.

Ques. 1. please state whether or not you
are the Plff. in this case, & if so,
whether or not you bought the land
of the plaintiff described in his
bill, if so, how much you was
to pay him for the same, & how
much if anything you have
paid him & in what way. also
state your trade or contract in full
as near as you remember it?

Ans. I am the defendant in this Cause, I bought
the land of the Plff, as described in the
Plffs. Bill - I was to pay him 1400\$
therefor, I consider that I have
more than paid him the amount

1 agreed to be paid, and said
 2 payments were made as follows
 3 viz 600\$ in cash at the time of the
 4 trade, \$248.40 in work on the
 5 500. Note, and I am entitled to the
 6 following offsets viz 50\$ for damage
 7 done to grass, 25\$ for boarding myself
 8 for 2 months while working for the
 9 Peff, 2\$ 2 pence going to Mossy Creek
 10 to work for the Peff, 6\$ for pasturing
 11 5 head hogs 4 months, 320\$ price of
 12 timber sold to L. E. Baylan, 50\$ fee
 13 paid Jackson & Blankenship in
 14 defending suit of S. M. Beaty et al vs
 15 A. P. Witt, 25\$ for my own attention
 16 looking after and defending said
 17 suit, and \$100.00 Surrendering to Peff
 18 possession of Shelburn house by
 19 agreement.

600
 248.40
 50
 25
 2
 6
 320
 50
 25
 100
 \$426.40

20 My Contract with Mr. Witt for said
 21 land is as follows.

22 I bought from Mr. Witt 100 acres
 23 of the S. Shelburn farm for which
 24 I was to pay him 1400\$, he was
 25 to give me possession of the Shelburn
 26 house garden and fruit green & to dry
 27 for our family use, this house not
 28 being on the land I bought, free of
 29 rent for twelve months, and I was
 30 to have possession thereof in a
 31 short time, ~~which I got and had~~
 32 I was to furnish myself and one

1 horse and work for said Witt
2 one year, for which he was to
3 pay me 500\$ and bear all my
4 expenses. Mr Witt informed me
5 at the time of the trade that ~~part~~
6 of the timber on said land was
7 sold to L. E. Baylon and he had
8 sold it to Jones & Ritchie, and
9 stated that after Jones & Ritchie
10 got their contract, the rest of
11 the timber was to be mine,
12 and he also agreed to put up tem-
13 porary gates and have the logging
14 done in one track as much as possible.
15 I was to execute my notes for 100\$
16 each payable in 1, 2, & 3 years for
17 bal. of said purchase price -

18 Mr Witt also told me there was
19 some purchase money due by
20 him on said land, which he
21 agreed to pay, and gave me
22 a title bond for a good title.

23 In accordance with my contract
24 in a short time thereafter I took posses-
25 sion of the Shelburn house, and occupied
26 it something like 2 months, when
27 Mr. Witt asked me to surrender him the
28 possession of said house, claiming
29 that he could sell it and the bal. of his
30 land at a good price - which I
31 declined to do unless I was comp-
32 ensated therefor to the extent of at

1 least 100\$ which he refused to
2 give me, but still insisted for the
3 possession. I then proposed to him
4 that if he would let my time go on
5 at the rate of 500\$ per year, for the
6 time it took me to put up temporary
7 buildings move &c which my family
8 could reasonably make out with
9 I would give him the possession
10 of said S. Shelburn house & premises
11 which I also agreed to do as soon as
12 possible and go on to Massey Creek
13 to work for him, which propo-
14 sition he accepted. I then went
15 to work on these temporary build-
16 ings about March 1st 1891 and comple-
17 ted said work in about 2½ months
18 I also hired considerable work
19 which I did not charge to said
20 Witt. I put up a small frame temporary
21 building, leaving it unciled loose plank
22 floors, without windows or doors,
23 and built some temporary pens out
24 of rails for my stock & grain.
25 I could not have performed this
26 work in a shorter time, which
27 work I consider reasonably worth \$100.00

28 I worked for the Peff in addition
29 to this 5. mo. & 25 days amounting to \$248.40
30 and for Mr. Davis for Peff 19¼ days " " 30.80

31 The damage to the grass on the land
32 sold me by said Witt, on account

1 of the failure of Mr. Witt to put up
2 the gates he agreed to was \$50.00

3 In my contract with Mr. Witt he
4 was to board & bear my expenses -
5 and after some time working
6 for him, I concluded to move
7 my family to Mossy Creek, he
8 proposing to furnish me a house
9 in which to live and bear the
10 expense of moving my family
11 thereto, and accordingly I moved
12 on a farm about 2 miles from
13 his house which he had rented
14 on which he had stock to look
15 after, and ^{it} was convenient for me to
16 board myself which I did for about
17 2 months which was reasonably worth \$25.00
18 For expenses actually paid out in
19 going over to Mossy Creek to work
20 for said Witt - - - - - \$2.00
21 I pastured said Witt's 5 head of hogs
22 4 months which I considered worth \$6.00
23 I paid Jackson & Blankenship a fee of
24 \$50.00 to prevent the land I purchased
25 from Mr. Witt being sold for a bal
26 of purchase money sought to be collected
27 in a suit S. M. Beaty vs A. P. Witt
28 et al to which reference is here made
29 as part ~~hereof~~ of this my deposition
30 The charge of 25¢ charged for
31 my attention attending court and
32 defending my interest in said suit

1 I consider reasonable.

2 Ques 2 Please state whether or not you
3 would have purchased the said
4 land from the plaintiff, ^{at the price you did} if he,
5 (~~the~~, plaintiff), had not represented to
6 you that after Messrs. Jones &
7 Ritchie got off the timber they
8 had bought from C. E. Baylor, that
9 the remainder would be yours?

10 Objected to by the Plaintiff, because entirely immu-
11 terial to any issue raised by the pleadings in
12 this case, secondly because, the deed of sale of
13 the timber was on record and said Defendant
14 had full notice of said sale of said timber, and
15 all its terms before he made said Trade.

16 Duncan & Hyatt,

17 for Plaintiff.

18 Ans I would not

19
20 Ques 3. Please state just what represen-
21 tations the plaintiff made to you
22 in regard to the timber at the
23 time you bought said land?

24 Objected for same reasons stated
25 above

Duncan & Hyatt

26 Ans Mr. Witt told me that a portion
27 of the timber had been sold off
28 of said land, but did not as I
29 now remember state the particulars
30 of the contract of sale of said timber
31 to Chas. E. Baylon, but stated to me
32 that Mr. Baylon had sold it to Jones & Ritchie

1 on the same terms that he had
2 sold to Baylon, or said he thought
3 they had the same contract
4 but stated to me when Jones &
5 Ritchie's contract was filled
6 the balance of the timber was
7 to be mine.

8 X examined.

9 ~~What~~ did you do in defending the suit against
10 ~~AP~~ Witt yourself & others by S. M. Beatty except to file
11 your answer.

Ans - I had to look up the matter, went
13 to see Mr. Beatty, Judge Morgan
14 & made as I remember 2 trips to town
15 looking after it.

2 Did you do anything in said case except to file
17 an answer.

Ans 18 I made no defense except filing an
19 answer.

3 Could you not have done that as well by one
21 trip as a dozen.

Ans 22 I could not, because on my first
23 trip I came for advice, the next time
24 there was no court, and I had
25 to make 3 trips.

4 Did you not know the defense you wanted to
27 make when you came the first time.

Ans 28 I did not.

5 What defense did you make, that you did not
30 know of before you came to town the first
31 time?

Ans 32 On my first trip I did not know

1 what was necessary for ^{me} to do.
2 the second time there was no court
3 ~~the~~ ^{he} could have answered on this
4 trip but Mr. Jackson was not
5 present, my answer will show
6 my defense

6 Have you paid Mr. Witt anything since you
8 filed your answer in that case if so, how
9 much and when

Ans Nothing:

7 In that answer did you claim credit for
12 everything, you had paid Mr. Witt, and if not
13 what did you leave out,

Ans I left out

15 The above question ^{+ any answer thereto} is objected to
16 because said answer is in writing
17 + is the best evidence.

18 J.B. for Def.

Ans I at that time claimed credit for
20 every thing I thought of, but since
21 that I thought of an other item

28 ~~Did you~~ 19 1/4 days work done for Mr.
23 Davis as directed by Mr. Witt
24 and 50\$ attorneys fee as charged
25 and 25\$ expences and attention
26 attending said trial and these
27 items are all I now remember.

28 Did you pay fifty dollars to Attorney for pre
29 paring and filing your answer in that case

Ans I did, atleast I executed my note
31 for it and have paid part of it.

102 Did you not procure Sam M. Beatty to bring

1 The suit against Witt yourself and Ball?

Ans 2 No, Sir I can't say that I did. I spoke
3 something at one time to Mr. Beatty
4 about the suit, stating to him I
5 wanted him to sue Ball or take
6 steps to make his money, because
7 I considered as the Ball tract had
8 been last sold, I thought it should
9 be liable for his purchase money
10 I wanted the matter settled.

11 11 Did you ^{not} get on your horse get Ball, and take
12 him with you and go to see Mr. Beatty and ask him
13 to bring said suit?

Ans 14 Mr. Ball and I went one time to see
15 Mr Beatty about the matter. I don't
16 recollect just now whether we requested
17 him to bring the suit or not, but I
18 might have asked him to bring the
19 suit - we wanted the thing settled

12 20 Was it not you who got Ball to go to Beatty, and
21 would he have gone, but for you.

Ans 22 I cannot say that I was the cause
23 of Ball going to Beatty - I suppose he
24 would have gone any way.

13 25 Did you first name it to Ball or Ball to you?

Ans 26 I cannot say. we frequently talked
27 about the matter

14 28 What was Beatty's debt against said land

Ans 29 One Thousand Dollars & Interest
30 some two or three years, is what
31 Mr Beatty told me.

15 32 How much did Ball owe Witt, at that time.

Ans¹ My understanding was that he
owed him about 2000\$ going
to Mr. Baylor.

15⁴ Did you not state in your answer in that case
That Bull owed \$2000. to A. P. Witt

Ans⁶ This question & any answer thereto
is ob. to as the answer is in
writing & is the best evidence.

Ans⁹ I suppose I did - The notes were exe-
cuted to Mr. Witt, but I failed to state they
had been sold by Witt to Baylor, I
at that time understood Baylor had
the notes

16¹⁴ At the time you purchased the tract of land for
which the notes in this suit were executed, did
you not know, that Mr. Witt had already sold
to C. E. Baylor all the merchantable and mer-
chantable timber standing on said land?

Ans¹⁹ I knew apart of the timber was
sold, but did not know the
particulars of said contract.
Mr. Witt told me it was sold

17²³ Did you not know that Mr. Baylor had a deed from
Mr. Witt for said timber

Ans²⁵ Yes sir - Mr. Witt told me he had.
18²⁶ Did you, before made the purchase of said land
call on Mr. Baylor to see said deed, examine it on
the record or anything of the kind

Ans³⁰ I don't think I did - My recollection
is that after I bought Mr. Baylor
read me the deed. I did not think
it necessary to look after the Baylor deed

1 from the fact, that Mr. Witt told me
2 he had sold the timber to Mr. Baylor
3 and Baylor had sold it to James &
4 Ritchie, and that after James & Ritchie
5 got their Contract, the remainder of
6 the timber was to be mine.

19 7 Will at the time, you bought, had James & Ritchie
8 removed the timber purchased by them from
9 Baylor, or any part of it.

Ans 10 They had not.

20 11 Will had you seen their contract with Baylor
Ans 12 I had not.

21 13 Had you paid Witt anything on said land when
14 Baylor read you the deed from Witt to him for
15 said timber? if so how much?

Ans 16 I had paid him \$600.00 or more, I don't
17 remember exactly when he read it to me

22 18 Are you certain he did not show & read said
19 deed to you before you purchased said land

Ans 20 I would not be positive, though if he did
21 I do not remember it.

23 22 How far did you live from Mr Baylor at the
23 time you made said purchase

Ans 24 Something like 2 1/2 miles.

24 25 At the time you made said purchase and
26 before you concluded said trade, did not
27 Mr Witt tell you that under his contract Mr
28 Baylor could take timber down as small
29 as 10 inches in diameter if he desired to do so.

Ans 30 Yes Sir he did - he said ^{he} expected
31 him to take it down that small.
32 but I did not expect it, from the fact

1 that Mr. Jones & Mr. Bayser, had told me
2 it would not be taken near that
3 small or close, I was buying and
4 taking the chances.

25. ~~How~~ ~~then~~ the timber be cut off that low
6 or anything like it.

Ans. 7. No Sir it has not.

26. 8 Did not you and Mr Will at ~~any~~ ^{some} time go
9 over said land, and mark the timber to be
10 cut or any of it? if so where and how
11 much did you mark

Ans. 12 We did go over the land and mark
13 the timber to be cut, after Jones & Ritchie's
L 14 contract was out, but I did not know
15 their contract was ended, this marking
16 was done by us under an agreement,
17 or compromise between us.

27. 18 Did you not stop them from cutting
19 timber, before they cut all you had marked

Ans. 20 Yes Sir, I did.

28. 21 About how much of the timber marked is
22 still left standing on the land?

Ans. 23 Not many. I don't suppose there is
24 over 6 or 8 trees.

29. 25 About how much is left on said land over
26 10 inches in diameter

Ans. 27 I cannot say, but I suppose there is
3 28 100 thousand ^{feet} or over, above 10 inches
29 in diameter, but little of which
30 is marketable.

30. 31 Do I understand you to say that it was a part
32 of your trade with Will, that he was to furnish

1 you the Shelburn house on his tract of land for
 2 your use as a dwelling place, if so for how long.
 Ans 3 I was and for twelve months.

31 4 Was not that house and farm then rented
 5 ~~for~~ the year 1891, and was it not then
 6 occupied by the renter?

Ans 7 I don't know that it was or was
 8 not, I only know I was to have
 9 it and got possession of it.

32 10 Was the fact of your going into that house
 11 mentioned at all at the time you and Witt
 12 traded.

Ans 13 It was.

33 14 Did not the conversation between you and him
 15 come up after the trade was made, and after your
 16 brother had determined not to occupy said
 17 premises for the year 1891? And did he not
 18 let you go into said house have a garden at some
 19 place or the farm and give you the use of fruit
 20 for family purposes in consideration of
 21 your watching over and taking care of said
 22 farm and the property of his left there?

Ans 23 He did not - it was mentioned in
 24 the trade.

34 25 What garden was you to have.

Ans 26 I don't know that it was particularly
 27 specified - I was to have the house
 28 and garden - I suppose it was the
 29 garden at the house, which had
 30 been used as a garden, Mr. Witt
 31 might have excepted this garden, but
 32 I was to have a garden.

35 1 What would be a reasonably fair cash rental value
2 of the Shelburn house. The garden attached thereto
3 and fruit for the use of your family, for 1 year.
Ans 4 I considered it worth at least \$100.00
5 per Year

36 6 Do you think that sum is the fair cash rental value
7 of said house garden and fruit for family use
Ans 8 I do, including the use of the stable and
9 other out buildings, and would pay the
10 same sum in cash under similar circum-
11 stances

37 12 Do you mean to be understood as saying that
13 said house garden fruit for family use and the out
14 houses on that land could be rented for \$100 per
15 year in the ordinary course of business
Ans 16 I don't know what it could be rented
17 for, but I know I would give it for
18 it under similar circumstances.

38 19 What would be the fair the cash rental val
20 ue of the whole of the Shelburn farm sold to
21 Ball and on which said house stood, per annum?
Ans 22 I should consider it worth, (everything considered)
23 some three or four hundred Dollars
24 per Year.

39 25 How many acres of cleared land is there on it.
Ans 26 I guess there is about 150 acres of cleared
27 land or more.

40 28 How long did you occupy said house.
Ans 29 Something like 2 months.

41 30 Did you not occupy it till about the 15th day of
31 April.

Ans 32 I don't remember the time I moved in

1 nor exactly the time I moved out.

42 2 After leaving said house where did you go to with your family.
Ans 3 I moved into the temporary buildings
4 I put up on my own farm.

43 5 How long did your family remain in said temporary
6 buildings until you removed them to Linn.
Ans 7 I cannot say exactly, but I think my
8 family occupied said temporary build-
9 ings about 14 months, I removed
10 them to Linn, about the 1st Aug.

44 How long did your family remain in Linn
12 until you removed them back.
Ans 13 I cannot state exactly, but I think
14 my family remained in Linn about
15 3 months

45 16 Did you remove your family back until some
17 time in December?

Ans 18 I moved them back before December

46 9 In whose house did you live while in Linn.
Ans 20 I lived in a house which belonged
21 to Mr. Witt or which he had rented -
22 and I have never paid him any
23 rent for the same, I did not expect
24 to pay him any rent, as he promised
25 to let me have it free of rent

47 26 Did you not likewise have fruit as much as
27 you needed free of charge?

Ans 28 We did have free use of green fruit,
29 but paid part of the fruit dried by my
30 wife.

48 31 Did Mr Witt likewise furnish you a cow for
32 the use of your family free of charge?

Ans 33 He did for a part of the time we were there
something like $\frac{2}{3}$ the time we were there

50 1 Did he not also furnish you with pasture for
2 your horses, while they were not at work?

Ans. 3 He pastured my horses all the time
4 because it was his contract to bear
5 all expenses, whenever they was out-
6 on the coursons the most of the time
7 I paid but little attention to it, because
8 he was to bear expenses, that is when
9 they were not in use.

51 10 You say that he was to bear the expenses of you and
11 your team. Was he to bear the expenses of either when
12 you were not working for him.

Ans. 13 He was not to bear my expenses except
14 when I was at work for him, but he
15 was to bear the expenses of the team
16 all the time.

52 17 Did you not object to the use of your team
18 by Witt and his hands, while you were not
19 working for him.

Ans. 20 I did not object to hands capable of prop-
21 erly handling teams, but I did object to
22 boys and such hands as did not know
23 how to manage a team.

53. 24 I see on your account you have Mr Witt charged
25 with 80,000 feet of lumber sold to Baylor. Is this
26 the timber taken off said land, by Baylor, under
27 his contract and the same timber, now used
28 by you and Witt as you have above stated in
29 this deposition.

Ans. 30 It is, the timber taken off after Jones &
31 Ritchie had closed their contract, &
32 was the same timber we marked.

34. 1. Was any part of said timber thus taken less than
2 10 inches in diameter.

Ans 3 It was not.

54 4. Did you not tell Mr Witt that a good deal
5 more timber could have been taken by Baylor
6 under his contract?

Ans 2 I did not.

55 8. Did you not stop Baylor from cutting timber
9 on said land.

Ans 0 I did.

56 11. Why did you not let Baylor take the logs he had
12 cut.

Ans 13 I found out that I could prove that
14 they had changed their contract and
15 was not cutting it on their first
16 contract and I thought the timber
17 was ripe, hence I stopped them
18 from moving it.

57 19. Did you find out that Baylor and Witt had
20 so changed their contract as to make said
21 Baylor to move and smaller timber than
22 Witt ~~informed~~ you Baylor was to get
23 at the time of ~~his~~ sale to you.

Ans 24 I thought I had, I thought I could
25 prove that fact & think yet I can.

58 26. Who informed you that Baylor & Witt had
27 so changed their contract as to make Baylor
28 to move and smaller timber.

Ans 29 Messrs Jones & Ritchie, and different others
30 it was a general talk of the people of
31 the country & the general opinion of the
32 people of the neighborhood that they had
changed it.

59 1 Did Mr. Jones Mr. Ritchie Mr. Ball, or any other
2 person ever tell you that Mr. Baylor and Mr.
3 Witt had so changed their contract as to entitle
4 Mr Baylor to take timber from said land less
5 than 10 inches in diameter or timber that
6 could not be mortised?

Ans 7 They did not.

60 8 Then all the change you ever heard of was that
9 of price was it not?

Ans 10 I understood that they had made a
11 new contract, and that Mr. Baylor
12 had refused to take any more timber
13 under the old or first Contract, &
14 did not take any more until after
15 the Contract was changed.

61 16 Did you ever hear from any person that said
17 Contract was changed as to size and quality
18 that Baylor had the right to take, if so who told you
19 and what did he tell you?

Ans 20 I did not.

62 21 Before you are

22 Re-examined.

ques 23 After Jones & Ritchie got their Con-
24 tract of the timber off of said
25 land, how much timber remained
26 that was afterwards taken off
27 by Mr. Baylor & how much was
28 it reasonably worth?

29 Objected to because immaterial & irrele-
30 vant.

Duncan & Hyatt
for Plff

31
Ans 32 There was at least 80 000 feet taken

1 off, after Jones & Ritchies Contract,
2 and it was reasonably worth \$400.00

2 3 you state on your cross-examina-
4 tion that you went to see S. M.
5 Beatty about bringing suit or if
6 he was going to bring suit to
7 enforce his vendor's lien against
8 the land with had sold to your-
9 self & Mr. Ball, why did you
10 do this?

11 objected to because witness has
12 already stated two or three times
13 why he went. ~~off~~

Ans, 14 From the fact, that as I have partly
15 stated before, that I knew Mr. Witt
16 owed Mr. Beatty 1000\$ and interest
17 thereon some time on three years,
18 and that Mr. Witt was a resident
19 of an other State and had no effects
20 in this State that I knew off, he
21 having traded the notes that Mr.
22 Ball owed him for land to C.
23 E. Baylon, I considered also that
24 I had about paid up for my
25 land, if I had reasonable credit
26 for damages &c, and for this
27 reason I wanted Mr. Beatty to
28 collect his money and settle
29 the matter in order that I might
30 know whether any part of it would
31 come off of my land.

3. 32 In your cross-examination you were

1 asked if you & Mr. Witt did not go over
2 said land & mark certain timber,
3 please state why you did this, under
4 what agreement or compromise
5 if any, & all about it?

Ans The reason I did this was that
7 Mr. Witt claimed they had not
8 took the timber according to contract
9 and that he was going to make them
10 cut more of the timber, on the first
11 contract, I made objection, when
12 Mr. Witt proposed to me to compro-
13 mise the matter stating that if I
14 would go with him and mark
15 the number of trees we might agree
16 on, that he would have the
17 marked trees cut and no more
18 and that if I did not do this,
19 that they would cut it down to
20 10 inches, and this is the reason I
21 agreed to go and mark said
22 timber, and also claimed they would
23 cut the Chestnut Oaks - and when
24 I found out they had made a new
25 contract about this timber, then
26 I put in my charge for this timber
27 taken on the new contract.

4 28 When you made the trade with Mr. Witt
29 for said land, did he or not agree to let
30 you have other timber not heretofore
31 spoken of, & if so, did he or not let
32 you have said timber as per contract?

Ans He did agree in our Contract to
 2 let me have or leave a small
 3 boundary of the timber ^{uncut} ~~uncut~~
 4 which he did not have ^{cut} which
 5 is in the boundary we ^{have}
 6 been talking about and that
 7 I purchased of him, this boundary
 8 had about 3 or 4 acres in it, and
 9 not very much timber on it.

Re cross examined.

11 You say in answer to the question next before the
 12 last. That when you found out "they" Baylor &
 13 Witt "had made a new contract about the tim-
 14 ber then you put in your charge for this tim-
 15 ber taken on the new contract." Now what
 16 new contract did you find out they had made,
 Ans 17 The only new contract I heard of, was
 18 that ~~they~~ had made a change in
 19 some way which might effect
 20 my interest.

21 Did you go to either Mr. Baylor or Mr Witt
 22 to see if they had made a change in said
 23 contract that affected your interest.

Ans 24 I think I did say something to
 25 Mr. Witt about it & accused him
 26 of making a new contract, but Mr.
 27 Witt claimed it was being taken
 28 on the first contract, I don't think
 29 I ever said any thing to Mr. Baylor
 30 about it.

31 At the time you and Mr Witt moved said
 32 timber as you have stated, above, did you

1 not state to Mr Witt that you expected more
2 timber to be taken under Baylor's contract
3 that you knew that Mr Witt was entitled to
4 have more taken and that the reason why
5 you had objected, to their taking the timber was
6 because you were afraid they would cut
7 more than they ought to, or smaller timber
8 than they ought to and is not that the reason
9 why you and he went and moved the timber
10 to be afterwards cut.

Ans 11 I did not make such statements to
12 Mr. Witt so far as I now remember
13 nor was that the reason we
14 marked the timber.

15 And further this witness saith not.

16 W. J. Tucker

17 P. M. Ball another witness of lawful
18 age being duly sworn deposes
19 and says.
20

1 / 21 Please state whether or not you
22 heard A. P. Witt, the plaintiff in
23 this ^{case} say, ^{sober} after he had sold the land
24 described in his bill, to the Dept.
25 W. J. Tucker, that after Jones & Ritchie
26 got their contract of timber off of
27 said land, that Tucker was to
28 have the remainder, if so till
29 all about:

Ans 30 objected to because totally immaterial, the
31 contract for the sale of said timber had been
32 made long before was reduced, to writing

1 recorded, and well known or at least its
2 terms could have been well known to
3 said Defendant, and because the conver-
4 sation here asked about was long after
5 the Trade between Plaintiff & Defendant
6 and could in no way affect the Trade
7 or the rights of the parties under it

8 Duncanson & Hyatt for
9 Plaintiff

Ans. 10 At the time I purchased the land
11 of Mr. Witt in Feby 1891, Mr. Witt
12 and W. F. Tucker went with me
13 to look over the land I purcha-
14 sed of Witt, and when we arriv-
15 ed on the hill near where Mr.
16 Tuckers line would come to,
17 Mr. ~~Witt~~ informed me that
18 a part of the timber on the
19 land I was buying was sold
20 and he remarked to me in the
21 presence of Mr. Tucker, that when
22 Jones & Ritchie got off the amount
23 of timber then sold, ^{to them} the balance
24 was to be mine and Tucker's or
25 this is the way I understood him

26 Do you say ^{that} you understood Mr. Witt
27 to say that when Jones & Ritchie
28 got off the timber they; Jones
29 & Ritchie, had bought that you
30 & Mr. Tucker were to have the
31 remainder on the lands bought
32 of him, Witt, by you & Tucker?

~~Ans.~~ objected to by Plffs counsel for same
reasons stated above. Duncanson & Hyatt

Ans 1 That is the way I understood it.

3 State whether or not you heard
A. p. Witt say that if Tucker gave
up the ~~house~~ house & Corn &c, on
the end of the place you bought
of Witt that he, Tucker, was to
be allowed his ^{time} while working
for him at \$5.00 or per year
in which to prepare temporary
house buildings &c. for his family
or words to that effect?

Ans Mr. Witt told me so - and so did
Mr. Tucker, they both told me the
same.

4 Did you observe Mr. Tucker during
the time that he was preparing said
buildings, &c, & if so, did he do good
work or such labor & put in
such time as is reasonable
for a man to work?

Ans I was not about Mr. Tucker very
much while he was doing the
work, but I know he went out
early and came in late from his
work.

(5) During the time that the timber was
being ^{cut &} removed from the lands of
Mr. Tucker, state if you know of any
damage being done to his farms, fences,
crops &c.?

Ans I do not. I was not up ^{there} as I now
remember, during the cutting of said timber.

Cross Examined

1. What time did Mr. Tucker give you possession of the house when you were living when you bought from Witt.

Ans. The 15th day of April 1891 he gave me possession of said house,
2. Did he move out on that day if not how long did he remain in the house until he moved out?

Ans. He did not move out on that day, and I don't exactly know how long he remained, but perhaps some two weeks.

3. Did he move out until he got his temporary buildings erected?

Ans. Mr. Tucker had his house up and partly covered before he moved out.

4. What other buildings did ^{he} erect if any that Spring and before he went to Mossy Creek?

Ans. He put up some rail pens, is my recollection.

5th. After your purchase or at the time thereof was it not the understanding between Witt, Tucker and yourself that Tucker was to have fruit off the farm you purchased, for family use, that year.

Ans. It was.

6. Did you prohibit him from getting any fruit ~~that~~ ^{he} desired for family use that year?

Ans. I did not.

7. In your answer to the first question you promised to you ~~any~~ that Mr. Witt said to you

1 in presence of Mr Lusher, that when Jones
2 & Ritchie got off the amount of timber
3 sold to them, the balance was to be yours
4 and Lusher's." Did he then say what amount
5 of timber had been sold to Jones & Ritchie, the
6 class of timber size thereof &c.

Ans 7 He did not.

8 Did he not tell you that Baylor or the
9 parties he had sold to had the right to take
10 all the timber from said land that could be
11 wrought, or down to 10 inches in diameter
12 if he desired?

Ans 13 Not at that time, ~~but my title~~
14 From which tract, the Lusher Tract, or the
15 tract purchased by you has the timber been
16 taken from account.

Ans 17 I do not know.

18 Prepared.

19 In your cross-examination you
20 say that Mr. Tucker stayed in the
21 house some two weeks after he had
22 given you possession - Did he
23 stay there under contract from you
24 or Witt?

Ans 25 He stayed there under my contract.
26 with him and at

27
28 If Witt had not kept his true sale
29 or contract with Baylor in regard
30 to the timber concealed from you
31 until after you traded with him
32 would you have bought the

1 land from him at the price
2 you bid, or in other words if you
3 had not understood from Witt that
4 the remainder of the timber after
5 Jones & Ritchie got off their con-
6 tract, ^{should be yours,} would you have bought
7 his land at the price you bid?
Ans 8 I would not.

9 Re-examined

10 Please state, what circumstance Mr. Witt
11 made or kept back, from you that if it
12 it had been made would have prevented
13 you from purchasing the land.

Ans 14 If I had known Mr. Baylor had
15 a right to the timber, I would not
16 have bought it at all - or had I
17 read the title bond given me
18 by him, ^{Witt} I would not have traded
19 and if Mr. Witt read the title bond
20 to me, I have no recollection of it.
21 How long after the bond was given you till you
22 did read it.

Ans 23 It was some two or three months.

24 How much did you still owe if anything on
25 said land at the time you read said bond,

Ans 26 I owed, ^{giving} ~~about~~ ¹⁸⁰⁰ \$1940 dollars

27 You went on and completed said trade after
28 reading the bond did you not

Ans 29 I did.

30 Did not Mr Witt give you the bond as soon as
31 prepared to be read by you.

Ans 32 He did.

6th You state that if you had known that
Baylor had a deal to the timber that you
would not have purchased the land, you
did know that the timber was sold and
that some person had a right to it did you not.
Ans I know that Jones & Ritchie had bought
a portion of the timber, but I
did not know the size or quality.
And further this witness saith not.

P. M. Ball

not
claim
2 days
\$1.32

James M. Thompson an other witness
of lawful age being duly sworn deposes
and says.

1 Do you know the tract of land
purchased by W. J. Tucker of R. F.
Witt & did you know it during
the time that the timber was being
cut off of & removed from
said land?

Ans I do and did.

2 Was there any damage done to said
farm, the fences & crops thereon,
during the time said timber was
being removed by reason of the
cutting & removing of the same,
if so state what?

Ans There was some fencing thrown down
by passing through three trees fell
across the fences, fences left down

around pasture land and stock
passing in and out.

3 Did you live on the farm at
the time & did you have any
trouble in keeping up the fences
in keeping stock in the pasture
& stock off of the pasture that
did not rightly belong therein?

Ans. I did live on the place and had
some trouble keeping the fences
up and stock out for some time,
and at last just let it go, as I had
not the time to look after it.

4 Was the pasture damaged by rea-
son of the fences being kept
thrown down, & if so, to what
extent?

Ans. I cannot say as to that.

5 Will it damage grass for the
fences to be thrown down &
stock come in upon it &
eat it up?

Ans. I would think it would.

X Examined

1 When and by whom was the fences left down
and the trees felled across the fence.

Ans. I think it was while the second lot of
timber was being got out.

2 Who got out the first lot.

Ans. Jarvis & Priestley.

3 Who got out the second lot.

Ans¹ Mr. L. E. Baylor had it done, as I
2 understood it.

4³ When did Mr Baylor commence getting out
4 said second lot of timber, and how long was
5 he at it,

Ans⁶ I dont know, I never charged my
7 memory with it,

5⁸ How long ago was when he commenced get-
9 ting it out, give your best impression.

Ans¹⁰ I dont remember.

7¹¹ Do you remember the season of the year
12 if so state it. Baylor got said timber out,

Ans¹³ As well as I remember it was in
14 the latter part of the summer and
15 in the fall

8¹⁶ In removing said timber was there any unne-
17 cessary ~~damage~~ ^{injury} done to Mr Lesters land? if
18 so please state what it was, and how much
19 you think he was damaged

Ans²⁰ I cannot say as to that.

21 Pastured.

1²² During the time they were cutting
23 & removing said timber did Mr.
24 Tucker use his pasture in pas-
25 turing his own stock or stock
26 belonging to other people?

Ans²⁷ His own stock was in part of the time.
28 and He was also pasturing stock for
29 other people.

2³⁰ Did any of the parties for whom
31 he was pasturing stock take their
32 stock away because they were not

1 or could not be kept in the
2 pasture by reason of the fences
3 being kept down & their getting
4 out of the pasture.

Ans 5 Some parties took their stock
6 away but I could not tell why
7 they did so.

3 9 What condition was Mr. Tucker's
10 house in at the time you moved
11 in it, & how long was it after
12 he moved to Mossy Creek till
13 you moved in said house?

Ans 14 The house was weatherboarded up -
15 not eiled, doors not hung, no lights
16 or sash in windows, no chimney
17 or stove, and I moved into said
18 house as he moved out.

19 And further this witness saith not
20 Witt
claim
\$1.40
James M. Thompson

21 I F Jones an other witness of lawful
22 age being duly sworn deposes and
23 says -
24
25

1 26 Please state if you had a conver-
27 sation with R. F. Witt, the Plaintiff in
28 this case, in regard to the remainder
29 of the timber on the remaining or
30 the land he, Witt, sold to W. J. Tucker,
31 after you & Mr. Pitchie had gotten
32 off the timber off of said land,

1 purchased by you & Mr. Ritchie of
2 C. E. Baylor, if so, state when it
3 was, when it was, what was
4 said & all about it?

5 objected to because immaterial and irrelevant
6 any conversation had with Witt after the Trade
7 with Tucker. Can in no way affect the matter
8 here under investigation.

9 Duncan & Hyatt, for
10 Plaintiff

11 Ans. I did have a conversation with A.
12 P. Witt in regard to the last sale of
13 the timber, it was in the Summer
14 of 1891 near C. E. Baylor's where
15 my saw mill was set, it was in
16 July or August. Mr. Witt in said
17 conversation insisted that I should
18 take the remaining timber after
19 my contract with Baylor was
20 completed, I had taken out on
21 my contract with Baylor 114,000 feet.
22 He insisted some two or three
23 times that I should take out
24 the bal of the timber on mine
25 and Baylor's contract, when he
26 saw that I would not do so - &
27 at an other time in a conversation
28 with me and Ritchie, he still saw
29 we would not take it out and
30 that we was not bound to, he
31 then asked me what I would
32 give him for the remainder of

1 of said timber, and I told him
 2 I would not give him more
 3 than \$1.00 per M. He then said
 4 I think I have it contracted to
 5 Mr. Baylor at \$3.00 per M. and
 6 he then asked me not to let
 7 Mr. Ball or any one know of
 8 this until he closed the contract
 9 with Mr. Baylor.

10
 11 2 Did you understand from Mr. Witt
 12 there in the conversation you have
 13 above related that Mr. Witt at
 14 that time had completed no
 15 further contract with Mr. Baylor
 16 in regard to the remainder of
 17 the timber, and that their timber
 18 contract was completed when
 19 you or Mr. Ritchie finished up
 20 the contract you had with Mr.
 21 Baylor?

12 (Ans. No more than I have told you, he
 13 said he had the remainder sold at
 14 3¢ per M. if Baylor did not back
 15 out

16 3 How much merchantable timber
 17 did you consider was left on
 18 the Tucker land after you &
 19 Mr. Ritchie got off your con-
 20 tract?

21 (Ans. I did not consider on my part, that
 22 there was very much. I considered

1 it very inferior stuff.

4² Are you a practical lumberman?

Ans³ I have been in the lumber business
4 about 5 years and in the log busi-
5 ness more than 12 years, therefore
6 I ought to know something about
7 the lumber business.

5⁹ How much timber was taken
10 off of the Tucker land after you
11 + Mr. Ritchie gotten off your con-
12 tract?

Ans¹³ There was 233,000 feet taken off of
14 the Ball and Tucker land and
15 something over one third was
16 taken off the Tucker land, which
17 is as near as I can come at it.

18 Cross examined

1¹⁹ Was your contract with Mr Baylor, the same
20 as Mr Baylor's contract with Will?

Ans²¹ It was not, ours made afterwards
22 and called for 1st + 2nd class logs
23 to be measured as scale measure,
24 and we was to take no logs under
25 20 inches in diameter.

2²⁶ How much timber was left by you on the
27 Tucker land, that was marketable.

Ans²⁸ There was about 80,000 feet taken off
29 and marketed, this was not of
30 good quality, ~~the inspectors told~~
31 ~~me that it did not run over 10%~~
32 ~~++ 2.~~

1 When did Mr Baylor move the timber taken off,
2 That is the timber you did not take,
Ans 3 I was taken off in Aug & Sept, for
4 the year 1891.

65 When did you take off the timber taken off by you
Ans 6 In May, June & part of July 1891

7 In cutting and removing the timber taken off
8 by you was any greater injury or damage
9 done to Mr Tucker's land, than was reasonably
10 necessary,

Ans 11 The above question is ob. to because
12 evidence in chief & not proper on
13 cross-examination unless brought out
14 on examination in chief. J. B. for Deft.
Ans 15 I don't think there was.

916 Do you know the price at which Baylor
17 sold the stuff taken off by him.

Ans 18 He sold it in with other lumber
19 all together about 1180.000 feet
20 straight at 12¢ per M.

21 The above question and answer
22 is ob. to because unless it is shown
23 that all the above amount of
24 lumber came off of the land in
25 dispute. J. B. for Deft
26 Re-examined.

27 Was you present all the time
28 the timber was being hauled off
29 of Mr. Tucker's land, & can you say
30 of your own knowledge that no unnecessary
31 damage was done to said land & the
32 fencing thereon?

Ans¹ I was backwards and forwards
from the mill to the woods where
the timber was being gotten out
once or twice a day, I cannot
say of my own knowledge that
~~any~~^{no} material damage was done
while I was getting out the first
lot of lumber, and I cannot
state as to the last work.

1 How much of the 1,180,000 feet
of lumber sold by Mr. Baylor at
\$12.00 per M. was of the last
lot of lumber cut off of
the Tucker land? would you

consider it merchantable alone?

Ans. About 80,000 feet of this 1,180,000
had been taken off of the Tucker
land, it was marketable or
merchantable at about 8¢ per M.

By Mr. Witt, In all my talks to you about
this timber did I not contend that I could
force Mr. Baylor to take the timber down
to 10 inches in diameter?

Ans. I do not remember that this was
the talk in all our talks with
Mr. Witt, I did not understand
this in our talks
And further this witness saith not

J. H. Jones

cost
claim
\$1.00

Nannie Tucker a witness of lawful age being duly sworn deposes and says.

1 Please state what relation you are to W. Y. Tucker, the Deft. in this case?

Ans I am his wife.

2 Please state whether or not at or about the time your husband bought his land of R. F. Witt, you heard Mr. Witt tell your husband that after Messrs. Jones & Ritchie got off their contract of timber that he (Tucker) should have the remainder?

Ans I did.

3 Please state if you was present & heard an agreement between Mr. Tucker & Mr. Witt in regard to Mr. Tucker's giving possession of the Shelburn house, Conn, &c? This question and the foregoing one do wit No. 2 are both excepted to because leading.

D. T. H.

Ans I was.

3 State what that agreement was if you remember it?

Ans. Mr. Witt agreed to allow him his time at the same rate he was working for him, while he was engaged in putting up temporary buildings.

4. State as near as you can about how long your husband was at work putting up temporary buildings before he went to Mossy Creek to continue work for Mr. Witt?

Ans. - About 2 months is my best recollection.

5. What was the condition of the house he had prepared for you to live in while he was gone to Mossy Creek, & how soon did he start to Mossy Creek after he quit working on said house, &c.?

Ans It was a small 2 room house weatherboarded, not ceiled, no doors hung, no partition nor windows in, and had no chimney. And my husband quit work on

said temporary building on Saturday and started to Mossy Creek to work for Mr. Witt on Monday following.

- 6 Please state whether or not you heard Mr. Witt promise your husband to ~~have~~ have the fences kept up on his farm while the timber was being taken off, if ^{so} state as near as you can what he said?

Ans. I heard Mr. Witt promise my husband that he would keep the farm enclosed while they were taking off the timber.

- 7 Please state ^{if you know} if there was an agreement by Mr. Witt to furnish to your husband a house free of rent & ^a ~~a~~ care to milk, & green fruit for family use during the time you all lived at Mossy Creek if your husband would go there to work for him?

Objected to because he was living

D F H

Ans

My best recollection is that he did.

8 Please state that if while you all were living at mossy Creek if your husband did not put in a good deal of extra time looking after Mr. Witt's stock & other affairs after the other hands had quit work?

Objected to because immaterial irrelevant, and contradictory of the plaintiff's case as made in his answer

D. H.

Ans Yes he did.

X Examined

1 What temporary buildings did your husband erect.

Ans. He built a little dwelling house and ~~some~~ rail pens to put his feed in

2. What was the size of the dwelling house

Ans I cannot tell, but it is not very large

3. Is it one or two stories high.

Ans It is one story.

4 ~~What~~ ~~your~~ husband build the house himself or did he have hands helping him, if so how many.

He did not build it all himself, but had some other parties helping him, one hand worked all the time.

5. At what time did your husband commence work on said house.

Ans. I cannot state for certain, but to the best of recollection he commenced along about the first of March.

6 Did it take him and the hands he employed working steadily from about the first of March till the 18th day of May to frame weatherboards, lay the floor and cover a house 14 by 24 feet.

Ans Yes Sir.

7th Do you now live in that house
Ans Yes Sir.

8 What time if at all did you move to Mossy creek.

Ans we moved to Mossy Creek the first of August to the best of my recollection

9 What time did you return from there?

Ans on the 11th of Nov.

10. You say in answer to question 7 of your examination, that Mr Witt agreed to furnish your husband, a house free of rent a cow to milk, and green fruit for family use if he would go to Mossy Creek. Did he furnish these things?

Ans. He furnished us a house, green fruit to use and a cow part of the time.

11. You are asked in question two if you heard a conversation, between Witt and your husband about the time the transaction between them was made, in which Witt told your husband that after Jones & Ritchie got their contract of timber that he Lucius was to have the remainder, and you said you did, how will you please tell where and where that conversation was, and tell all that Mr Witt said, giving his words as nearly as you can.

Ans. The conversation took place at our house about the time they made their land trade - I can't tell all Mr. Witts words, but I do remember that Mr. Witt said

that my husband was to have all the timber left after Jones & Ritchie got their first contract, of the first class timber.

12. Did not Mr Witt tell your husband that he had sold to Baylor & Baylor had sold to Jones & Ritchie?

Ans. I don't think he did, my recollection is that he had sold to Jones & Ritchie

13. Did not Mr Witt, tell your husband that the parties to whom he had sold had the right to take all the Poplar and Oak timber off said land that was marketable down to 10 inches in diameter?

Ans. I don't recollect any such conversation.

14th Did you hear all the conversation between your husband and Witt in reference to said land tract

Ans. No Sir I did not.

15th Did you not stop Baylor's hands from hauling timber from said lands

Ans. I did not.

16 Did you not give them orders
not to go into the farm after lumber
Ans I did not as I recollect of.

17 Did your husband work on said
house every day from the time
he commenced until he finished
except Sundays

Ans He did to the best of my recollection

18 When did your husband and you
self move into the Shelburn house

Ans I dont remember exactly.

19 Did your husband work any for Mr
Davis before he went to Money Creek
and if so when

Ans He did work some I do not know
how much I cant ^{tell} when but it was
after we moved to the Shelburn house

Ans And further this witness saith not
Naminie E. Tucker
mark

The further taking of Depositions
in this Cause is continued
until May 12th 1894.

J. A. Hyatt Comr.

Commissioners Office
May 12th 1894

Met pursuant to adjournment
 present A. P. Witt Peff, and
 W. Y. Tucker left, and Dun-
 can & Syatt atty for Peff and
 Ewing & Morgan ~~att~~ ~~counsel~~
 for Defendant.

When P. F. Seal a witness of
 lawful age being duly sworn
 deposes and says-

Ques 1-

By Defendant.

Plum state whether or
 not you know the lands
 bought of A. P. Witt by
 W. Y. Tucker. If state
 whether or not you
 know a road or log way
 made by Rich T Jones or
 C. E. Baylor. If so state all
 you know about the condition
 the fences was kept in by
 the parties, & what damage
 was done Mr Tucker, or
 any way, by said parties.

Ans

I am acquainted with the
 land bought by W. Y. Tucker
 of A. P. Witt, Jones & Ritchie
 and C. E. Baylor, hauled and
 made several roads over said

land and through the cleared
fields, and the fences were
down in several places,
^{I timber cut across said fences,}
I engaged Mr. Tucker to
pasture some for me, I
had to take my stock
away because the fences
were kept in such condi-
tion, that my stock was
out of the pasture as much
as it was in, I had four
head of cattle there a short
time - the pasture was
very good, I was to pay
Mr. Tucker 2\$ per head per
month for pasturing said
stock - If said Tucker
could have had stock to
pasture on said land
during the season, the pasture
would have brought him
24\$ per month, I consider it
would have pastured ~~at~~
least 12 head of cattle all
during the season, there
was about 20 acres in
grass. And on this land I

Consider the grass season would have reasonably lasted 3 months and possibly longer.

X 4

- 1 Did any other persons have stock in said pasture but yourself, if so how many head

Ans There were several head of stock in said pasture, but I don't know whose they were

- 2 What time did you turn in.

Ans About the 15th May 1891

- 3 What time did the logging commence and by whom Jones & Ritchie or Baylor.

Ans Jones & Ritchie done the first logging, which ^{was} commenced shortly after I turned in.

- 4 How long did you keep your cattle there and what did your pasturing come to.

Ans I think I kept my cattle in the pasture 4 weeks, and I think I paid Mr. Tuckin \$8 therefor.

- 5 Did the other people who had stock in said pasture take out about the time you did or did they let them stay longer.

Ans My ^{brother} Robert took his yoke of oxen out about the same time I did. and as to the others I cant say.

6. Then as I understand you the damages of which you speak were the loss of potatoes or principally so.

Ans It would be principally so.

7. And said loss would be from May 15th up to 15th of Aug or 1st Sept.

Ans Yes Sir.

8. Who did the logging during that period.

Ans James Ritchie.

9. Was there more damages done to the land and fencing by cutting said timber and hauling ^{it} over said land. Than was reasonable necessary to get off said timber.

Ans I cannot state positively, but I consider the falling of trees across the fences were unnecessary or at least apart of them.

10. What would be the damages done to the fences by the falling of trees over the fences.

Ans The reasonable damage would be 5 or 6\$.

Re Examined by Deft

Ques 1st What was the usual price of pasture for cattle in that neighborhood.

Ans Two Dollars per month.

And further this witness saith not.

I do seal
The further taking of depositions in this cause is continued until May 15th 1894

J. H. Hyatt Clerk

Commissioner's Office

May 16th 1894.

Met pursuant to adjournment present Deft & his attorneys and Plff. & his attorneys.

J. F. Jones a witness of lawful age after being duly sworn deposes and says.

Ques 1st

By Deft

Mr Jones please state when your ^{to Harry Riches} contract was made with Mr Chas E. Baylon for the timber you logged, and sawed on W. Y. Lickers land?

Objected to because this witness has already been introduced and has

Testified in full for the Deft. Done and signed

A ~~And~~ said question is further objected to because the time when said contract was made has already been testified to by H Ritchie a witness introduced by Deft. & he cannot now contradict his own witness

Amos & Hyatt for
Plaintiff

Ans It was made the 9th of August 1890.

X Examined

Ques 1st Is that contract in writing

Ans It is

Ques 2 Will you please file it as part of your depo-

Ans The Contract is either in my papers or in my partner's Mr. Ritchie's papers, If I can find it I will file it and will claim mark the same X.

. 50^c. And further this witness with not
J. H. Jones

W. G. Lucken an other witness of lawful age being duly sworn deposes and says.

Ques 1 By Deft Did you agree with

Mr With to go and live in the
old log cabin on your place & be
known of by Mr With in his deposition.
This question is objected to and any other ques-
tion because this witness has been before in
produced, and testified fully.

Wm. S. Hyatt,

Ans I did not.

Quest 2 By same

Did you ever rec'd release
of your contract with Mr With
for work, refuse to work for
Mr With or Mr C. C. Davis?

Ans I did not.

Quest 3 Did not Mr With tell
you when you attempted to
settle with ~~Mr With~~ him that
he had kept no account of the
time you had worked.

Ans He did, he told me he had
kept no account of my time
worked.

Quest Did you at any time
tell Mr With that there was
still timber on your land
that belonged to the said
With.

Ans I did not as I have any recollection of

Ques

Did not Mr. Ritchie, Jones & Baylor not tell you before you bought this land, that they had bought the timber?

Ans

Mr. Witt, Mr. Jones and Mr. Baylor all told me so, but I don't remember of having any talk with Mr. Ritchie about it until after I had bought the land.

Ques

If you know Man Stole who paid the Beatty note spoken of here before?

Ans

I cannot say who paid it. I suppose Mr. Witt paid it off.

+ Examined

- 1 You say in answer to the second question just propounded to you, that you never refused to work for Davis or Witt until released from your contract, when was you released.

Ans

I can't give the date exactly, it was some time in December 1891

- 2 Then why did you not do more work for him, in the year up to the time you was released.

5-3

Ans, I was willing to quit, so was Mr. Witt willing— the reason I did not put in more time, was that I was not in condition to work on account of my eyes, ^{this was} along during the summer of 1891.

3 Why did you not put in more than 13 1/4 days between Decr 13th 1890 and April 15th 1891.

Ans. I don't recollect now why I did not— but now I call to mind that I was reworking on those temporary buildings heretofore referred to, apart of this time.

4 How many days did you work on said temporary buildings between Decr 13th 1890 and April 15th 1891.

Ans I cannot state exactly, but my best information is I worked about 35 days or more, I worked about 2 1/2 months on said buildings.

5 How many days labor did you use in erecting you are said temporary building.

Ans About 30 days.

6 Do you tell the commissioners that it required 95 days labor to frame weather board cover and lay the floor in a one story house 14 by 24 feet.

Ans. Yes Sir it did, taking it from the stump, I got out the sills in the woods, hauled the lumber from Morgan Thomas's Mill a distance of about 2 miles, made & covered building with 2 feet boards

7 You state that Mr. Will told you he kept no accurate account of your work. Did you not give to him, the number of days you worked each month, and was it not exactly as Will gave it in the other day on his examination.

Ans. I called the number of days over to him and he took it down according to the way I had it on my book.

Ques. 8. And further this deponent saith not.
W. J. Tucker

The foregoing depositions were taken before me at the times and place mentioned and Subscribed and Sworn to

by the witness on due
Farm. J. A. Syatt
May 15th 1894 Conn

W. Y. Tucker
ad 30 Lepo.
A. P. Witt

40
120
170

reit \$6.22

1st

A. P. Witt

Commissioners Office
May 3rd 1894

vs
W. Y. Lueker

The depositions of Chas E.
Bayer and others -

_____ Taken at
the time of taking an account
in the above styled Cause, and
intended to be read as evidence
on behalf of the Plaintiff.

Present - Deft and Deft, and their
attorneys.

When C. E. Bayer a witness of
lawful age being introduced &
after being duly sworn deposes
and says -

1st Ques for plaintiff:- Please state whether
you bought some timber from A. P. Witt off
the land which he after wards sold to W. Y.
Lueker; if so, when, how much did you
buy, at what price and how and when
you were to get it out?

Ans. I purchased from A. P. Witt and Samuel
M. Beatty all the poplar and Oak timber
on the lands now owned by W. Y. Lueker
and P. M. Ball, that could be marketed
as shown by my deed from them
dated on the 30th day of April 1890, ^{a copy of which} ~~herewith~~
filed as part of this my deposition - at
that time Mr. Witt had ^{bought} ~~sold~~ these lands
back from said Beatty, but the purchase

1 price had not been fully paid, so
2 I required a deed for said timber
3 from both of them, the deed fully
4 sets forth the contract, and kind
5 and amount of timber I was to
6 have, the way I was to get it off &c.
7 I did not get all the timber off
8 of said land that my deed called
9 for, or that could have been marketed
10 nor did I get off what I had cut.
11 I cannot say exactly how much I
12 could have got, as I have never
13 looked over the lands since I stopped
14 getting it off - I could have sold
15 any amount of such timber at
16 12¢ per M. The reason why I did
17 not continue to get said timber off
18 my teamsters informed me that
19 Mr. W. Y. Tucker stopped them, or
20 ordered them to stop taking off said
21 timber. I was to pay Mr. J. P. Witt
22 for all the timber under a special
23 contract measured in the log.
24 and paid him for all I got -

25 On examination the witness
26 says - I did not have two
27 contracts with Mr. Witt as to this
28 timber, that is as to the kind and
29 to the extent I was to take, other
30 than is set out in said deed.
31 The first lot ~~of said timber~~ ~~logged out~~ I sold to
32 Jones & Ritchie, I did not consider

1 my Contract with A. H. Witt as
2 ended or completed with after said
3 lot was disposed off.

4 I don't think that I even told
5 Jones & Ritchie or any one else
6 that my Contract had ended with
7 Witt after this lot was disposed of
8 that is the first lot I sold to Jones
9 & Ritchie - all the bal of the timber
10 I got off of said lands I sold
11 to Scott & Crittendon.

12 If, I even drew up a second writing
13 with A. P. Witt other than the deed, I
14 have no recollection of it, concerning
15 said timber, nor do I remember even
16 signing any such writing.

17 The deed sets forth that I was to
18 pay for the timber, graded, at board
19 measure - and Mr. Witt & I verbally,
20 afterwards, agreed that the same should
21 be paid for at an average price
22 log measurement of 3¢ pr. m. - the
23 first agreement was to only embrace
24 1st & 2nd class, the second class to embrace
25 all culls, that could be marketed.

26 I was anxious to abandon the
27 contract after I closed out with
28 Jones & Ritchie, but Mr. Witt held
29 me to it. I would gladly stop
30 because I feared I would lose
31 money. I told Mr. Witt I feared
32 I could not market the rest of the

1 rest of the timber at a saving figure,
2 when Mr. Witt introduced me to
3 purchasers who would buy said
4 timber and held me to the contract,
5 but I sold to Scott & Brittendon
6 who gave me an advance of 2¢
7 per M. over his purchasers bid,
8 ~~and~~ I have not yet received all
9 the pay therefor.

10 For the first lot of said timber
11 sold to Jones & Ritchie I paid to
12 A. P. Witt 44.5¢ per M. ~~log~~ measure
13 for the second lot sold to Scott & Brittendon
14 I paid him 3¢ per M. log measure

witness
50¢

15 And further this witness saith not
16 A. E. Baylor

17 James B. Barker another witness of lawful
18 sale being duly sworn deposes & says,

19 Are you acquainted with the land purchased
20 by the Defendant W. J. Lusk from A. P. Witt.

Ans 1 I am.

2. 22 Please state whether or not you cut the timber
23 sold by Witt to, Baylor on the land sold by
24 said Witt to, said Lusk and to J. M. Ball.

25 I mean the timber that was cut & removed.

Ans 26 I assisted in cutting the ^{last} timber
27 cut and removed from said lands.

3 28 On which of said tracts, the Lusk or the Ball
29 tract was the timber taken off the ~~last~~ closest.

Ans 30 It was taken off the closest on the
31 Ball tract.

4 32 If the timber was taken off the Lusk land

as close and clean as it was taken off the
Ball land, how much more timber could
have been obtained

Ans 4 I cannot state definitely, but my best
5 estimate is that from 50 to 100. thousand
6 feet could be taken from the Lucken
7 land before it is as clear of timber
8 as the Ball land.

Will the purchaser, by way of saving their pocket
 must atly think marketable timber
 that could have been marketed, including
 Poplar and Oak, and if not how much more
 could have been got therefor.

Ans. All the ^{merchantable} timber was not taken, ~~and~~ the poplar timber was ~~cut~~ ^{off}, but not all taken. I suppose there is from 25 to 50 thousand feet of merchantable Oak left on said land.

619 How much Poplar Limber was cut and
20 not taken off.

Ans There was 9 poplar logs cut and not
removed which I estimate to aver
age 250 feet to the log.

724 Do you know why these logs were not
25 removed. If so please state why

Ans I do not

827 Did not Mr. Lusher move such time as
28 as he thought would come under the
29 contract. And if so was all that he
30 moved out and removed

Aug 31 Mr. Witt & Tucker went over the land
32 and marked some timber, and all that

1 was branded was not cut.

9th Please state whether or not more damage
3 was done to the land of Mr Tucker in removing
4 my said timber than was reasonably necessary

Ans I cannot state as I ~~cannot~~ did not
6 notice as to the damage

10 You state all the merchantable timber was
8 not cut from said land please state what stops
9 put the cutting if you know.

Ans 10 We received an order from Mr. W. G.
11 Tucker not cut any more.

1 Please state ^{an answer} what kind of an
12 order Mr. Tucker sent to stop the
13 cutting of the timber & whether
14 or not you know he gave any
15 order to that effect at all or
16 not?
17

Ans 18 He gave me a verbal order in
19 which he stated for me not to
20 cut any more timber until he
21 and Mr. Witt could see further.

2 22 In answer to question 8 of your
23 examination in chief you
24 state Mr. Witt & Mr. Tucker went
25 over the land & marked certain
26 timber ~~that all the marked~~
27 timber. Do you know this to
28 be a fact?

Ans 29 I did not see them marked the timber
30 but it was the arrangement and under-
31 standing that they were to go before
32 us and mark the timber, and the timber

1 was marked, but I do not know
2 who marked it.

3 4 you state there was from 25'
5 to 50 thousand feet of merchant-
6 able timber left on the Tucker
7 land, do you know this to be
8 a fact & do you know of your
9 own knowledge that ^{any} of said
10 timber could have been marketed?

Ans I did not give a definite answer to
12 this question when first propounded
13 to me, nor can I do so now, but
14 I am certain some of the timber
15 could have been marketed

4. 16 please state whether or not you
17 do not know that in cutting
18 & removing the timber from
19 the Tucker land that trees
20 were cut & felled across &
21 his fences?

Ans I know that as high as 3 trees
23 were cut & fell across his fences
24 And further this witness saith not.
25 James T. Barker
26

wit
claims
to

27 The further taking depo. in this
28 Cause is continued until the
29 12th May 1894. J. A. Hyatt Comr.

30 Commissioner's Office
31 May 12/1894
32

Met pursuant to Adjournment

1 Present, Pff + Left, and Duncan
2 + Syatt for Pff, and Ewing and
3 Morgan of Counsel for Left.

4 H.P. With a witness of lawful
5 age being duly sworn deposes
6 and says

Ques 1- By Pffs Attorney:- Please state
8 if you are the Plaintiff in this suit?
9 I am.

Ans

Ques 2- Please state the terms of the contract
11 of sale of land between yourself and
12 the defendant W. Y. Tucker by which
13 the notes here sued on were executed?

Ans I sold Mr. W. Y. Tucker One hundred
15 acres of land at the price of
16 1400\$, with the understanding that
17 the marketable timber including
18 Oak and poplar was sold to E.
19 E. Baylor, deeded and a right
20 of way over said land by which
21 to remove the same given to
22 said Baylor in said deed for
23 said timber. I also explained
24 to Mr. Tucker, that Mr. Baylor
25 would be entitled to take all
26 the marketable Oak and poplar
27 down to 10 inches in diameter.

28 Said Tucker was to and did pay
29 me down on said land 400\$, and
30 executed notes for the balance
31 as follows, three notes of 100\$ each
32 which are the notes filed with the

9

Bill, and the 500\$ note also
 filed with the Bill which last
 note was to be paid in the
 following manner - viz in work
 by said Tucker at the rate of
 500\$ per year, this work was
 to be performed for me or
 at my direction. I first
 directed Mr. Tucker to work
 for C. C. Davis, and he worked
 for said Davis as was reported
 to me by Tucker & Davis 19 1/4 days.
 Mr. Tucker then set in to work
 for me, counting from the time he
 left home to go to Messey Creek
 where I lived on the 18 day of
 May 1891, and according to
 Mr. Tuckers book at the time
 he quit work and at the time
 we settled, or as he gave it
 out to me, 12 days in May,
 26 days in June, 19 days in July,
 12 days in August, 16 days in Sept,
 24 days in October & 8 days in
 Novn, and 23 days in December.
 Total number of days worked
 168 1/4, and according to our
 agreement he was to work 26 days.

19 1/4
 12
 26
 19
 12
 16
 24
 18
 23
 168 1/4

per month on $3\frac{1}{2}$ days for the
Year, leaving $143\frac{3}{4}$ days yet due
on said years work, but we
at that time settled some other
business transactions between
ourselves resulting in showing
that Tucker on matters not
connected with the land notes
was due me \$29.67, and
this amount was taken from
the amount of his work and
the bal of said work credited
on the work note, which is
the item credited on said note,
this settlement this far was
agreed on between us, we
then disagreed in our settle-
ment about the repairing of
a wagon I had done for
Mr. Tucker to the amount
of \$7.84 paid out by me for
repairs on Tucker's wagon
Mr. Tucker thought as his
wagon was in my use, I
should pay for the repairs
but I thought otherwise
because Mr. Tucker in our

agreement was to furnish
a wagon and team and ^{work} for
me at the same rates he
was to work for Mr. Davis
that is at the rate of 500¢ per
~~year~~, he was in our first
Contract to furnish himself
+ horse and work for Mr.
Davis and I was to bear
his necessary expenses, and
when he agreed to work
with his wagon + team for
me at the same rate I
was to pay all expenses, but
nothing was said about me
paying for repairs, ^{about} ~~at~~ the
time we had said repairing
done the following conversation
took place between us. "I said
to Mr. Tucker, I guess I Had better
have your wagon repaired +
charge you up with the amount
of said repairs, and I understood
Mr. Tucker to agree for said
repairs to be done as I sugg-
ested" we further differed
in this, Mr. Tucker claimed
that I should allow him

something for the building of a dwelling house on the land I sold him, I don't think he stated the amount he claimed, but to this I dissented.

Q. question. You state that Mr. Lucker thought you ought to allow him something for the time he was working in the erection of a dwelling house on the land you sold him. Mr. Lucker has stated in his testimony that at the time he purchased said land from you that it was a part of the agreement that you should furnish him the Shelburn house standing on that part of the Shelburn tract which ~~you~~ afterwards sold, and that afterwards he went into said house, and that when you sold to Ball, you agreed, in order to get possession of said house, to let his time go on on the work contract while he was building himself a temporary house. Now please state all about this matter.

Ans.

My understanding was at the time I rented him, ^{Lucker} the Shelburn house

that Mr. Tucker for the use of house, out buildings and as ~~as~~ as I remember a garden somewhere on the farm, and the use of green fruit for family use, he was ^{to} look after my stock take care of fruit had up fences &c he was to look after my general interest on my farm, and when I had an opportunity to sell said land, and applied to Mr. Tucker for the possession of said house and premises, he made some objections to giving up said possessions, we then talked about his moving to a house then standing on the land I had sold him, and after some talk, I suggested that Mr. Tucker could stay in said Shelburn house until the 15 day of April 1891 at which time my understanding was that Mr. Tucker's family, was to move into the house then standing on the land I had sold him, it was also talked between us that

there was no out buildings at that place, and I agreed to let Mr. Tucker return home and cease working for me as at my direction, and have time to put up temporary out buildings in which to store feed and probably for one chore, and this time was to be allowed him out of his work on said note. Mr. Tucker did not go into this ^{house} standing on the land I sold him, nor did he build the temporary out building agreed on, hence no credit was given him on said note for such work.

He did build a new house on the land I sold him, and some temporary out building at that place.

4. Was it any part of your land trade with Tucker that you should furnish ^{him} your Shelburn house to live in for a year, a garden fruit &c.

Ans

It was not, to the best of my knowledge.

5 What kind of house did Mr Tucker
erect, for which ^{he} here desires to charge
you. Temporary or permanent

Ans I considered it a permanent
house. it is a very good
house and where he now
resides.

6. Mr Tucker. in the account filed with
his ^{or owner} ~~Bill~~ charges you with \$100. for sur-
rendering the Shelburn house to you. please
state whether or not you agreed to pay
said that sum for the possession of said
house or ~~owe~~ him that or any other
sum for giving you possession of said
house

Ans I did not agree to pay any
amount for the surrendering
possession of said house
except as before stated I
agreed to allow him the
time he was engaged in
erecting temporary building
for his hay and ~~stoepe~~
and I don't consider that I
owe him anything for
surrendering said house and
premises to me. I furnished
him a house and fruit for

family use, pasture for ^{and} a cow
to milk, at Mossy Creek
free of Charge, and paid
my own and his families
trail road fair ~~and expenses~~
from Lee Leo. to Mossy Creek
amounting to \$8.08 ~~free of~~
Charge

7 Are you willing for Mr Tucker to continue
in ~~his~~ position at Mossy Creek, longer
that is until the end of the year 1891

Ans. I was, willing for him
to remain there until he
completed his years work

8 Mr Tucker charges you with \$50.00 for
damage to his grass. do you owe him
anything on this item.

Ans. I do not.

9 He also charges you with \$25.00 for
board of himself while working for you
do you owe him anything on this item
tell all about it.

Ans. I do not, Mr. Tucker of his
own accord stayed at
home with his family a
small portion of the time,
while at work for me at Mossy
Creek

His meals were always ready for him at my house, it was at his own election he did not take them.

10. He charges you with \$600 for pasturing 4 hogs. 4 months. is this a proper charge against you, state all about this item.
 Ans. I don't consider I owe Mr. Lucker any thing for pasturing hogs - I never told him or agreed that he should ever pasture any hogs for me I had some hogs running out around the Shelburn farm, possibly had I not pastured his horses free of charge for a considerable time at Massy Creek Tenn, and for some other favors done for him & family, I might be due him something for trouble with my hogs.

11. Mr. Lucker charges you \$32000 for 80000 ft of timber sold to C. E. Baylor at \$400 per thousand. Is this a proper charge against you?
 Ans. It is not.

Q. 12. Did you sell any timber from the land sold by you to Tucker after you made said sale to Tucker.

Ans No Sir, I did not.

13. Now, Please state if Mr. Baylor or any other person acting under your ~~or Baylor's~~ authority cut or removed any timber from said tract of land that was not embraced in Baylor's contract made before you sold to Tucker and of which you fully informed Mr. Tucker before sale of land to Tucker.

Ans No Sir; he did not, nor did he take the full amount of his contract.

14. Did you make a new contract with Baylor after you sold the land to Tucker, by which you let Baylor have any additional timber not embraced in the original contract.

Ans I did not.

15. What different or second arrangement did you and Baylor make, if you made any after the Trade with Tucker, in reference to said timber

Mr. Baylon under my deed to him was to have the logs sawed and put on sticks and graded in two grades for which he was to pay me 4 + 5\$ per thousand the 2nd grade to include saps & culls, taking all the oak and poplar he could market, and afterwards it was agreed between me & Mr. Baylon that he should measure in the log as soon as cut all the marketable timber on said lands, paying me therefor 3\$ per thousand straight paying when logs were measured, after paying me log measure ~~for~~ ^{for} all that had been cut at that time at the rate stated in said deed for said timber to him mentioned, this is all the change ever made between Mr. Baylon & I in regard to this timber transaction.

16 At the time you and Luskus traded, did he or not know that Baylor was to have right of ingress and egress over said land to remove the timber owned by you & him.

Ans. He did, for I told him so at that time.

17 Now please state if any unnecessary damage was done to the land or fences of Mr Luskus in removing said timber from said land, and, if so state how much?

Ans. - I don't consider that there was. Much less damage was done than I expected.

18 Tell what you know about the institution of the suit against you Luskus and Ball, by S. M. Beatty.

Ans. I owed Mr. Beatty 1000⁰⁰ purchase money on the land sold to Ball & Luskus, and my information was that he Mr Beatty owed it to some Fulkerson heirs, who did not need the money - and Mr Beatty said he would not press me for the money until he was called on by

there for it. And my understanding was that Mr. Tucker went and got Mr. Ball and that they went to Mr. Beatty and insisted on his bringing suit against me for said money

- 19 The charges for \$50.⁰⁰ and \$25.⁰⁰ charged by Mr. Tucker for fee to Blansburgh and Jackson and for ^{his} ~~your~~ ^{expenses} ~~services~~.
 Were these ~~services~~ ^{expenses} incurred at your request for your benefit or did you derive any benefit from the services of Mr. Tucker, or the attorney employed by him?

Ans I did not, these services were of no benefit to me, nor did I authorize Mr. Tucker to incur them.

- 20 Did not you and Mr. Tucker go over the land sold by you to him, agree on what timber was to be removed, if so please state where it was, how you came to do it, and whether or not Mr. Tucker afterwards stopped. Baylor from getting the timber there moved, and how much you were damaged thereby

Ans. I did go over said land with Mr. Tucker, and we did agree on what timber was to be removed and we marked the same, it was some time in the summer or fall of 1891, after Jones & Ritchie had completed their contract getting of the timber they took. The reason we did this was that Mr. Baylon had informed me that Mr. Tucker had ordered him not to get any more timber off said land, I then went to Mr. Tucker and requested him to tell me what he meant by giving said order, when Mr. Tucker replied that there was other timber he expected me to have, but that he was afraid that if they went back on the place to cut timber that they would destroy to his injury the small timber, I then proposed to Mr. Tucker that he should get his ax and we would go and mark such timber as I was

entitled to under my Contract with Baylon, he marked the trees and I numbered them up to 146 Trees, leaving him on agreement some little boundaries of timber unmarked where he did not propose to clear. I also released unto him the Chestnut Oak, which I could have forced Baylon to take under my Contract with him. Baylon's hands told me they were ordered by Drucker to stop cutting timber until he could see me - and I consider that I was damaged some but I cannot state how much, as I have never examined closely how many trees were left which was marked. I asked Mr. Drucker why he stopped the hands from cutting and he stated to me that some damage had been done by getting out said timber and that was the reason he stopped them.

Ques 1st. Errors Examined by self.
Please state how much
Timber you did get of the
lands of Tucker?

Ans. It was taken of by others
and as it was reported with the
timber taken off of the land
sold Mr Ball I can't say
how much came off of Tucker's
part.

Ques 2nd

You state that by the
 deed you had sold the
timber to Chas E Baylor
for 3 & 4 \$ per M and this
is shown by ^{by said deed} Now was not
change of price of timber
made with Baylor after
the 1st contract had expired
in which got \$3.00.

Ans. There was but one contract
as to the amount of timber
to be taken of & that was
to include all the Oak and
poplar that could be marked
by said C. E. Baylor.

As I stated the only change was
to let him have it in the log instead of
the board & he was to suffer all loss of damage

Ques 3rd I have it at \$3.00 straight -

~~25~~
25- Just Did not Wm Lucke, tell
you the reason he stopped
the hands that he was now
damaged largely, and you
did not you then agree, to
all he said about, and that
no more timber should be
cut, on that account?

Ans I don't know that he stated
that he was largely damaged, but
that some damage was done,
either by the cutters of ~~timber~~
or haulers of the timber &
that he had asked the cutters
to cut no more until he
saw me, and as well as
I remember I told him that
I was not due him any dam-
age as Baylor had the right
of way to move said timber, but
however I did not force it
cut.

Just Then you did think
Lucke Damaged? ~~Some?~~
Not more than necessary
in getting said timber off

Just Then Mr Witt You do
Not Consider to go lay &
Knock down fences, ^{make rails} and,
the destruction of 20 acres
grass any damage to a man,

Ans

I don't think his grass was
destroyed at all. Had this
been done of course it would
have been damage, but as
I have already stated I don't
think he suffered ~~such~~ damage.

Just

Said Tucker, ^{Not} Tell you
he would not give up the
possession of the house garden
and orchard he had rented
unless you would allow
his time to go on?

Ans. As I have already stated the
agreement was to allow his time
to go on if ~~he would~~ he would
work for me until about the
time that he was to move in to the
old house & build the temporary
out buildings.

Just

Who if any one was present
when you and Tucker talked
this matter over

Ans. I think Mr P. M. Ball was by
& heard part if not all of the
talk. Perhaps Tucker's wife.

Ques. Did Mr Tucker not
tell you when he returned to
Mossey Creek that he had
put up your hogs, and
was on pasture and you
not tell him that was all
right?

Ans. Don't know just what was said
about the hogs, perhaps this was
so though.

Ans. Did you not tell Mr. Tucker
while at Mossey Creek that you
had no more work for him
to do & that he might get out
and pay the remainder of the
purchase money some other
way?

Ans. I insisted on Mr Tucker working
for Mr Davis after his
family went back to Va.
as I could not work him
to an advantage after he
could not furnish his team.
But I did I believe agree

that he might pay me otherwise
but it was after he had refused
to go ahead & do the work.
According to contract

Ques.

You speak of posturing Mr.
Tucker's horses, were you not
using them at your pleasure
during that time?

Ans.

Mr. Tucker refused to let
a hand I had hired work his
team & as I could not
use them myself & any
great advantage they were but
little use to me.

Ques.

Was not the hand you had
young & incompetent & did Tucker
not tell you if you would get
a hand that would use them
correctly you could do so?

Ans.

He did not object to me using
them myself, but I don't
remember what he said as
to others using them only
that he did not want the
boy I had hired use them.

Ques.

You speak of the fact

that Mr. Tucker was to look after your affairs at the time he took charge of the Shebborn house, ^{while he was there} did he not do so?

Ans. I suppose he did.

Ques. Were you not notified by Mr. Beatty himself that if you did not pay him what ~~you~~ owed him that he would sue? And were you not notified before you say you saw Tucker some one going to see Beatty?

Ans. Mr. Beatty wrote me something about the danger of being sued himself & that he would have to make his money, but I can't tell you about the matter & and learned that he was not going to be pressed by those whom he owed. & ~~the~~ ~~did not~~ ~~bring suit~~.

Ques. Were you not to put in gats for the use of those hauling timber, & did you do so?

Ans. I think there was something said about putting up temporary gats but I don't remember who was to do this.

And further this witness
saith not. A. P. Kitt.

The further taking of depositions
in this cause is continued until
Tuesday the 15th May 1894

J. A. Hyatt
Clerk
Commissioners Office
May 14th 1894

Met pursuant to adjournment
Present, Plff. Defs & their attorneys
M. R. Ball a witness of lawful
age being duly sworn deposes
and says.

Ques^t By Plff's Counsel. Please state if
you are or are not a practical carpenter
and joiner.

Ans. I am, that's my business.

2. Please state how many days it would
reasonably take to, go into the woods cut
and hew sills, lay the foundation, frame
a one story house 24 by 14 feet, weather
board it and make boards and cover
hauling the lumber for framing (except
the sills) weather boarding and floor
ing a distance of two miles.

Ans My estimate is that it would take 25 days to do such a job of work.

X-E-X-

Ques. 1. When you say it would take 25 days to do such a job as you were asked about in question one of your examination in Chief do you mean to say that an inexperienced workman could do the work in that length of time or do you have reference to an experienced or practical workman?

Ans- I think a good hand and experienced workman could do the work in that time

2 Please state how many days it would take one man to go in the woods, cut from the stump here the sills & sleepers haul them to the building grounds, lay the foundation out of rock, hauling the same from $\frac{1}{2}$ to $\frac{3}{4}$ of a mile for such a building as spoken of above? Also hauling said sills

Ans $\frac{1}{4}$ of a mile?
In about 9 days

2. How many days would it take to haul the framing & rafters, say a distance of $2\frac{1}{2}$ miles & put the same up ready for weatherboarding & covering?

Ans About 4 or 5 days I guess.

3. How many days would it take one man to haul the weatherboarding, a distance of $2\frac{1}{2}$ miles, dress the same by hand & put it up on such a building as before described?

Ans 8 or 10 days

4. How many days would it take to frame & case up 3 windows & 2 doors?

Ans Hauling the lumber $2\frac{1}{2}$ miles?
3 or 4 days

5. How many days would it take to box up the corners & ~~weatherboard~~ the gable ends, dressing the lumber by hand?

Ans Three days a guess.

6 How many days to go into the woods, cut the timber from the stump, make two foot boards & haul them $\frac{1}{4}$ of a mile & cover such a building?

Ans- about 4 or 5 days.

7 How many days to joint the flooring - lay it down & nail it & lay the loft with loose plank?

Ans 3 days I guess.

8 In estimating the number of days in doing the work before referred to do you mean an experienced workman or an inexperienced one?

Ans In answering the first question I did not understand that the foundation &c was embraced and I mean an experienced workman could do it in this time.

And further this witness saith not.

M. R. Ball

James M. Thompson another witness introduced by Plaintiff, being duly sworn deposes & says.

1. Did you live on the canal sold by Witt to Tucker during the summer & fall of 1891?

Ans I did.

2. Please state what damage if any was done to the grass of Tucker during that summer by stock getting in where fences were left down by the log haulers?

Ans I don't think there was any damage done to said grass by outside stock, I had two cows on said grass

Examined. By Deft
Quest. You say you moved on the place in Aug 1891 - now is it not a fact that you know of Peter Seal and others taking their cattle out of said pasture, because the fence was kept down and they could not keep their cattle in?

Ans No Sir - I kept the fence up until after Peter Seal took his

Cattle out.

Ques. Did you not on your former examination in this case say other stock had got in the pasture?

Ans. I did not.

3 Was the fence left down by the loggers?

Ans. The fences were down towards the last of the logging.

4 In what condition was the fencing kept prior to August when you moved on the place?

Ans. The fences were kept up most of the time, probably all the time. I am not positive as to that.

5 How often did you go around said premises and observe the condition of the fence from May 1891 until August 1891?

Ans. I don't think I was often if ever around and observed said fences before I moved there in August 1891.

5- Now you first told me the fences were kept up during the spring of 1891 and again you say you had not visited the premises, until in Aug of that year can you now tell me how this or explain to me which is correct?

Ans I was hauling through the place for Jones & Ritchie during the summer of 1891, I never said I had not visited the premises until Aug 1891, I know that myself and others kept said fences up while the hauling of Jones & Ritchie was going on

6 Was there any trees cut across the fences of Mr. Tucker? How many & who laid up the fences?

Ans Some two or three trees were fell across the fence, and I put up said fences the best I could, at one place especially I think I fixed them all up & this was towards the last of the cutting.

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Ques 7 Did not the parties who
hauled these logs, roll in
timber, ^{or broke it up} on Luckers land &
load when it was an equal
by good way to ^{load} haul, the logs
from the outside?

Ans They did in one place, they could
have by clearing out or up a little
with claim had as convenient place to load.
90¢ And further this witness saith not
James M. Thompson

The foregoing depositions
were duly taken before
me at the times & place
mentioned, Sworn to
and subscribed by the
witnesses in due form
May 20 1894. J. A. Hyatt
Clerk

A. P. Witt
as 3 Depo
W. G. Luper

with 2.06

A. P. Witt

against

W. Y. Tucker

Plff.

vs. In Chancery

Sept 3

To the Hon. W. T. Miller Judge
of the Circuit Court for Lee County:

The undersigned Special Court,
in obedience to the requirements
of a decree entered in the above
styled Cause on the 9th March 1894,
after giving the parties in interest
due and timely notice, proceeded
on the 3rd day of May 1894 and
succeeding days down to the 15th
day of May 1894, to perform the
duties assigned me in said
decree. As will appear, much
time was consumed taking depo-
sitions on both sides, to which
a future reference will be made.

As directed by said decree &
as will be seen by reference to
Statement herewith filed marked
X. Y. I have charged said W.
Y. Tucker with \$1400.00 the
purchase price of the land
sold him by A. P. Witt as of
December 13th 1890. and have
given him credit with \$600.00
the amount admitted by both parties

as paid down in Cash on day of sale, and with the item of \$239.53, admitted by said parties to have been paid on the work note of \$500.00. over these two payments no objections were made, the parties also called over quite a number of other items of account between themselves, readily agreeing on each charge, and liquidating and fully settling the various items marked paid and with this mark 'X' on the right of said items all shown in defendant Tucker's account filed in this Cause.

Thus leaving only a few items in said account in dispute, and your Court, was about to conclude that this matter of, no doubt honest difference, would soon be adjusted, but to his great surprise as will appear from the taking of depositions which soon followed, there was a wide difference between said parties, on these few items as charged by the defendant Tucker.

And beginning with the item

248.40
239.53

\$8.87

of \$8.77 difference between the credit of \$239.53 given by Witt on the 500\$ work note, and the charge of \$248.40 for work done on said note by Lucker, this item of \$8.87 being the sum claimed to have been expended by Witt on Lucker's wagon while in his service or use. Upon this point the deposition of witness will show that Witt was to bear all expenses of Lucker incident to working for him, these contracts however appear to have been frequently changed at first Lucker was to furnish himself and hares, Witt bearing all expenses. now had Lucker's horse become barefoot, it seems to me under this contract, that Witt would have had to pay for shoeing his horse, then from the proof the contract of work was changed and Lucker was to work with his wagon and team at the same rate and terms. So your court concludes it is right for Witt to bear this expense of repairs, and hence gives Lucker credit for this item of \$8.87.

We next come to the item of \$100.00 charged by Lucker for surrendering

possession of the Shelburn house,
garden &c, which also is ~~a direct~~
compensation, ^{claimed} for the temporary buildings
of which so much of the proof relates,
put up by said Tucker all of which
arose from the surrendering of the
Shelburn house and premises.

It is proven by at least a pre-
ponderance of evidence, that Tucker
was to have compensation for this
temporary work, building, moving &c
the evidence of Mr. Tucker, his wife
and Mr. Ball P.M. all prove this
fact, Mr. Witts evidence somewhat
modifying the contract, as to the
time such buildings could be
erected, there is also some
conflict, Mr. Tucker being the
only witness stating positively
that he was employed 2½ months
~~and a half~~ performing said work.
It is also proven that these temporary
^{buildings} were not used but a short time
untill ^{this} ^{well as} many of the ^{other} transactions
or agreement of these parties were
changed, or different agreements
entered into between these parties
and that Mr. Witt under his

agreement, furnished Mr. Lucker at Massy Creek, houses, gardens, corns to milk pasturage &c but these new arrangements does not, unless proven, effect in any way previous contracts, hence Your Commissioner allows this credit of \$100.00 to Mr. Lucker.

The next item considered is \$6.00 for pasturing Witts hogs - upon this there appears also conflicting testimony. Mr. Lucker proves the charge to be reasonable, by his own evidence, and Witt's own evidence is that he stated to Lucker on being informed that his hogs had been put in the pasture, ~~stated~~ that, that was all right and that possibly Lucker should be compensated some for the trouble looking after his (Witts) hogs. Your Court. also gives Lucker credit for his charge on this account of \$6.00.

We next come to consider the charge by Lucker of \$50.00 for damage done to grass. This charge is not in the opinion of Your Court, supported sufficiently

supported by evidence, to be allowed the evidence no where shows that the destruction of the grass, was caused by the negligence of Mr. Witt hence said charge is not allowed.

We next come to consider the item of \$25.00 charged by Mr. Lueken for boarding himself while engaged working for Mr. Witt at Mossy Creek Tenn. - no contract or agreement is proven in support of this charge by Lueken, on the contrary Mr. Witts evidence proves that Mr. Luekens meals were always ready for him at his table and that it was Luekens fault if he failed to partake of them, and after studying this charge closely your Court disallows the same.

The next item claiming our attention, and by far the greatest in amount is the charge of \$320.00 by Lueker on account of 80.000 feet of timber taken off, the Land sold Lueker by Witt, by L. E. Baylor, after Jones & Ritchie had completed their contract with

said Baylar relating to getting timber off, of said land.

It is clearly proven by all the witness testifying, on this point on both sides, Mr. Tucker himself not excepted, and by the deed from Beaty & Witt & their wives to L. E. Baylan, which was on record at the time said land was contracted to Tucker, that at the time said Contract was entered into, all the Oak & Poplar timber down to 10 inches in diameter was sold off of said land. very much time has been taken up by both sides as is clearly shown by the depositions here filed, proving what was said about Jones & Ritchies Contract about said timber, which it is, and was admitted by all parties had been made with L. E. Baylan and could in no wise effect Witts Contract with Baylar

The Contract of Witt with Baylan was that he Baylan was to take all marketable Oak and Poplar timber, It was under this Contract, Witts privilege to enforce

the same against Baylon, ^{arose} provided
he could produce a market, ^{which} it seems he did do. the change
of price and kind of measurement
afterwards, ^{made between Baylon & Witt} in no wise affected
the deed to said timber provided
it was a marketable price.

It will also be noted that, the
evidence conflicts as to the time
Jones & Ritchie's contract was made
but it being the conclusion of
Your Court that Jones & Ritchie's
Contract has nothing to do,
~~with~~, nor does it in any way
effect the sale of the land to Tucker
who was informed as to Baylon's
rights at the time of said sale, ^{with}
not presuming ^{to know}, or stating the
~~the~~ Contract between Jones & Ritchie
and Baylon.

It is also evident from the
proof on this point, that some
dissatisfaction arose in the
mind of Mr. Tucker concerning
the removing of the last lot of
timber off of this land, which
gave rise to the marking of the
timber to be taken by Baylon

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by Lucker & Witt, this marking and compromising between the parties, has a strong tendency in the mind of Your Court, to settle this question between these parties and was a compromise on the part of Mr. Witt as to his legal rights against Baylor.

Your Court for these reasons disallows this Charge, but fearing that possibly he is not properly advised as to the law bearing on this question a statement will be placed before Your Honor in which this Charge is allowed.

We lastly consider the Charge of \$50.00 Attorneys fee paid Jackson & Blankenship and the Charge of \$25.00 for Mr. Lucker's own services on account of the suit of Samuel M. Beaty vs A.P. Witt et al.

Upon these Charges and in support or defense thereof but little proof was placed before Your Court. It was admitted by Mr. Lucker that at the time he purchased he was informed

by Mr. Witt that this \$1000.00 and some interest was due Mr. Beatty as purchase money on ~~the~~ land sold him, and on that afterwards sold Ball. The defense made or necessary to be made by Tucker did not demand such large expenditures, besides Mr. Tucker states he knew that Ball still owed Witt a large sum of money on his purchase, and his alarm that his land was in danger was illfounded. It further appears that Witt came forward and paid off the claim ~~owed~~ on by Beatty, but the same not having been done as shown by the papers in said Cause until after the defense made by Tucker.

Your Court concludes to allow the attorneys fee of \$50.00 actually paid out or assumed to be paid by said Tucker as of the 6th March 1893, & disallows the \$25.00 ^{no charge} by reference to Statement "X Y" which is adopted by Your Court, as the true

Statement of the account between these parties, in which it will be seen I have ^{given} said Lucker credit for all the charges made by him allowed by me, and by charging him with \$13.00 as an amount agreed by him to be due Witt on dealings between them outside of land transaction, resulting in showing that Mr. Witt is due from Mr. Lucker on his land purchase the sum of Four hundred and forty two dollars & twenty three cents (\$442.23) as of March 6th 1893.

I make and file herewith for the consideration of the Court Statement O, in which I allow Lucker credit for the \$320.00 item and the item of \$50.00 for damage to pasture in addition to what I have already in statement X Y. allowed him, resulting in showing that Lucker is due Witt on the 6th March 1893 the sum of \$61.60, a part of this Statement is made at

request of Defendants attorney.
All of which is
respectfully submitted.
J. A. Hyatt, Counr

After completing this report and
before filing same the Plffs attyes
ask me to make a statement
in which the ~~city~~ ^{\$50.00 is disallowed} been and only \$40.00
a reasonable amount for temporary building
is allowed, which is done and herewith
filed marked "G." and shows the
sum of \$505.60 due said Witt as of
Decr. 13th 1891. Respectfully submitted
J. A. Hyatt
Counr.

A. D. Witt
Couns Report
as M
W. J. Lucien

Filed May 23rd 1894
A. J. Munnay clerk.

This report and state
ment & I filed there
with is referred to
see explanation and
reasons therefor under
item one statement
Demande & Hyatt
attys for Plffs

Witnesses 8.28
Couns fees \$50.00

A.P.Witt,

Plaintiff.

vs.

In chancery.

W.Y.Tucker,

Defendant.

Your undersigned ~~special~~ commissioner, having been apponit-
ed by a decree of your honor's court ^{in said cause} to make sale of the land
of the said Tucker, in the bill and proceedings mentioned, beg^a
leave to submit the following report:

The said W.Y.Tucker paid the sum in full adjudged to be
paid by him to the said Witt. It was therefore unnecessary
that a sale of said land should be made.

Said Tucker was not satisfied with the description of the
land in the deed which the said Witt filed with his bill mark~~e~~
ed "D". The said Witt and wife have therefore made and exe-
cuted a deed describing said land therein as desired by said
Tucker and according to the survey thereof made by Chas.E.El-
liott. Said deed is filed herewith marked "Deed".

All of which is respectfully submitted.

L. P. Hyatt

Special Commissioner.

A. P. Witt

vs. ~~Comr's~~
~~Report~~

W. Y. Tucker

Filed in open Court
March the 8th 1895-

A. B. Munsey
Clerk

1890

W. Y. Locker
To A. P. Witt.

Decer. 13th

"

" 29.

3

To this sum purchase price of land \$1400.00

By this sum admitted as paid down \$600.00

" " " " paid out \$500.00 note 239.53

" " " repairs on wagon 8.87

" " " for pasturing hogs 6.00

" " " work on temporary building 100.00 \$954.40

Bal. due Decer. 13th 1891. this sum \$445.60

Bal. A. P. Witt's private acct agreed 13.00

Bal due Witt, Decer. 13th 1891. \$458.60

Int. to March 6th 1893 33.63

By this sum paid attys fees 50.00 \$492.23

Bal due Witt March 6th 1893 \$442.23

This statement is accepted to be true
the commission allows a credit of \$100.00
for work on temporary building, this item
is not proved. The house erected is not a
temporary, but a permanent building.
The sum allowed is too large \$40.00
would be enough, even if Plainiff had
to pay for it.

The sum allowed by board for attys
fees ought not to be allowed. No service
was rendered to Witt thereby. The fees
incurred ought to be brought and ought
to pay expenses incurred by himself

Done and attested at
the court house

5' 00
 2 39
 261 3 00
 800
 5' 61 19 8

Xy.

1 For and in consideration of fourteen
2 hundred dollars paid or secured to be
3 paid I have This day sold to Wm Y.
4 Tucker one hundred acres of land
5 being the portion of S Shelburn tract
6 adjoining Wm Carboos's & Hiram Howards
7 N. Davis & other lands, near Boon's
8 Path Lee Co. Va and for the payment
9 of said amount I bind myself to
10 make or cause to be made a good
11 and sufficient deed to said amount
12 of land subject to a penalty of
13 fourteen hundred dollars to be
14 paid to said W. Y. Tucker if the
15 deed is not made.

16 Said Wm Y. Tucker is to pay six-
17 hundred dollars down and the
18 balance as will be agreed on by
19 the parties concerned

20 Given under my hand This
21 Dec. 13th 1890.

22 A. P. Witt Esq

A. P. Witt

vs. { Copy of T. Bond

W. Y. Tucker

"A"

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DB 32 52
P 208

This deed made and entered into this 30th
day of April 1890, by and between Samuel
M. Beatty and Sallie his wife A. P. Witt
and A. P. Witt his wife of the first part
and Charles E. Baylor of the second part
in which the said parties of the first part
bargain sell and hereby convey unto the
party of the second part all their right
title and interest in all the merchantable
timber that can be marketed on the
tract of land known as Samuel Shelburn
farm adjoining T. P. Carter, E. S. King, and
others including all oak, and poplar timber
and the party of the first part further agree
that the party of the second part shall
have right of way over said tract of land
to move said timber; when he gets ready
to cut same; and also have as much of
every tree cut as he wants to move, and
so move all as not to damage more
than is possible any the land over which
said timber has to be moved, by the party
of the second part paying five dollars per
thousand for all first class timber and
four dollars per thousand for ^{all} second class
And paying cash in hand one thousand
dollars the receipt whereof we hereby acknow-
ledge and the residue as soon as the
timber is sawed and classed, And the
parties of the second part further agrees
to move and cut said timber first of all
timber handled and at the earliest

1 hour possible to do so. And if not move in
2 two years. I bind myself to pay for the timber
3 any way at Contract price. Given under
4 ~~my~~ hands and seals this 30th day of
5 April 1890

6 Samuel M. Beatty *Seal*

7 Sallie A. Beatty *Seal*

8 A. P. With *Seal*

9 A Octavia With *Seal*

10 Virginia, Lee County:

11 I, William H. Spear, a Notary
12 Public for the County aforesaid in the State
13 of Virginia do Certify that Samuel M. Beatty
14 and Sallie A. Beatty his wife and A. P. With
15 and A. O. With his wife whose names are sign-
16 ed to the foregoing deed bearing date Ap-
17 ril 30th 1890, have acknowledged the same
18 before me in my County aforesaid. Given
19 under my hand this April 30th 1890

20 William H. Spear
21 *WHS*

22 Virginia, Lee County, to-wit:-

23 In the office of the Clerk of the said
24 County, June 21st 1890, this deed was presented
25 and with the Certificate thereto annexed admi-
26 tted to record

27 Test, John R. Gibson Clerk

28 A Copy-Teste: J. V. F. Richmond Clerk
29
30
31
32

A.P. Witt,

To ~~M~~ Deed

C.E. Baylor

copy.

"a1"

Mr. A.P. Witt In acct with

1891 Wm. Y. Tucker

Dr.

April 1	To surrendering possession of Sheltahona by grant	100 00	
Jan. 92	Labor for 5 mo. & 25 day cr. on \$500 note (Less 8.77)	248 40	+
191	To damage done to grass	50	
"	" Boarding self while working for A.P. Witt	25	
"	" Expense going to Massey Creek for " Paid	2	+
"	" Airt paid C.C. Elliott for surveying land " Paid	4	+
"	" Labor of myself " " " Paid	2-1	+
Sep 28. 91-	" pasturing 5 hogs 4 months	6	
"	" " 9 " Hogs (bought at sale)	33 17	+
"	" 10 " Balance on due bill to W. Moody for Wool Paid	6 74	+
"	" 11 " 1 Cult Paid	35	+
"	" 12 " 1 More Paid	25	+
91. 92	" 80,000 ft. of timber sold to C.E. Bayler @ 4 ⁰⁰	3 20	
March 6 th 93	" fee paid Jackson & Blankinship on app. Boty vs A.P. Witt	50	
"	" 15 " Expenses attending the above suit	25	
16		\$935 51	
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W. Y. Tucker,
add } act.

A. P. Will

"act."

Wm J. Tucker
to A.P. Witt

Dr.

Failure from 1st of March till
20th of May 1891, to work with
wagon and team - Damage - \$25.00

To Expenses in moving Tucker's
family to Mossy Creek - 10.00

To rents of houses, use of
fruit and cow - 60.00

To Timber which had been
sold to ~~Tucker~~ Baylor 12 ^{logs} 40.00

To 100,000 ft. of Timber sold to
C.E. Baylor which Tucker would 300.00
not allow said Baylor to haul

p308 - 25 off.

To tow bark

75.00
\$735.00

Mitt Encouraging
vs 3 accounts
Lucker

W. Y. Luchen
To A. P. Witt

don

To this sum purchase price of land \$1400.00

By " paid down \$600.00

" " sum agreed on work 239.53

" " " repairs on wagon 8.87

" " " pasturing hogs 6.00

" " " for temporary buildings 40.00

894.40

Bal due Witt Dec 13th 1891.

\$505.60

"G."

Question 3rd

Please state whether or not Mr. With proposed to sell you this timber and smuggle it through on old Contract

Ans Mr With wanted to sell us timber and we declined to buy. don't remember of him stating that we could smuggle it through under the old contract as we would not buy the timber at any price.
Cross Ex

(1) Did you & J. Jones buy some timber of C. C. Baylor ^{out of the same place} & if so when?

Ans we did in the Spring 1891.

(2) In Question 2 you state that I asked you to say nothing about the trade with Mr Baylor to Mr Ball. Please state if Tucker's name was used in this commission.

Ans I don't think Mr Tucker's name was mentioned.

(3) you speak of a new trade, Please state if you know in what respect the trade with Mr Baylor was changed.

Ans I know nothing in regard to what changes was made in the trade with Baylor. I and Jones bought from Baylor first and second grade of timber and we taken what we thought was 1st. 2. and declined take any more.

J. Harry Ritchie

State of Tennessee, County of Claiborne

This agreement made by A. P. Witt & W. Y. Tucker this the 11th day of May 1894 that the statement made by H. Ritchie in the suit between A. P. Witt as plaintiff and W. Y. Tucker as defendant shall be read as evidence in said suit now pending Circuit Court of Lee County Virginia and we agree to waive all form of said Ritchie being being sworn to said evidence.

A. P. Witt
W. Y. Tucker.

Question 1st

Mr Ritchie please state whether or not you had a conversation with Mr Witt concerning the timber cut on the Shelburne farm and if so state where & when said what it was?

Ans. I and Mr Witt and J. H. Jones had a conversation in regard to the timber on the Shelburne farm I think it was in the year 1891. the conversation that past between us was means Mr Brooks Mr Witt wanted I and Jones to continue cutting timber ~~off~~ and we declined to cut any more and Mr Witt told us that he had made a rather contract with Mr Baylor in regard to the timber and would have it all cut.

Question 2nd

State whether or not Mr Witt asked you to not say any thing about the new contract to Mr Ball

Ans. Mr Witt requested us ~~not~~ to say nothing about the new contract made with Baylor to Ball

W. Y. Lucken

To A. P. Witt

On

To this sum purchase price of land \$1400.00

By " " paid down \$600.00

" " " " on \$500.00 note 248.40

" " " for temporary building etc 100.00

" " " damage done 50.00

" " " for timber 320.00 1318.40

Add bal. Witts acct

\$181.60

13.00

\$94.60

7.00

101.60

50.00

Due to March 6th 1893

By attys fee

Bal due Witt Mr. 6th 1893. \$61.60

Exceptions of Defendant to Comr. Report.

Defendant excepts to Comr. report because item charged for 80,000 ft of Timber was not allowed this claim amounted to \$320⁰⁰ it being a reasonable charge if allowed at all. In statement "O." filed by Comr. this claim is allowed and defendant insists that this is a correct statement.

By an inspection of the evidence it will fully appear that previous to the sale of this land by Witt (the comp't) to Tucker (the deft) Witt sold a large lot of this Timber to C.E. Baylor see deed marked "A1" this was to be "merchantable Timber that can be marketed on the land known as Samuel Shelburn farm - - - - - including all oak & poplar Timber" This contract for Timber was afterwards sold to Jones & Richie by said C.E. Baylor, and they went upon this land & cut and removed all the Timber that they claimed they were entitled to under this deed or contract. see the deposition of H. Richie here filed, and the deposition of James F. Jones ^{Page 32-33} by these depositions it will be seen that Witt & Baylor have admit that the Timber under their contract, ^{was that which was removed by Jones} and Witt

even offered to sell this remaining
timber to them & when they refused to
buy it he ^{said nothing about it to} requested them to Ball &
Tucker about it until he closed the
contract with Mr. Bayler for it.

An other admission was made to
Phillip Ball by Witt who told him
that when Richie & Jones got off their
timber that he & Tucker would have
the remainder left on the land
This is not only proven by Phil Ball
but also by Tucker and Nannie Tucker
see their depositions pages 37, 24, 7

It will be seen by this evidence that
Witt had represented to Tucker that he
was to have this timber and that they
would not have purchased the land
at the price they did but for the
expectation of getting this timber under
the representation made by Witt.

That there was a subsequent agreement
made by Witt and Bayler there can be
but little doubt, they themselves admit
that there was a change in the price see
their depositions. Witt told Mr. Richie
that he had made an other contract
with Bayler. Now if these facts are

true and they are not disputed it seems that the evidence is conclusive that Witt had no right to sell this timber and that he did it by a subsequent contract with Bayler taking timber down to 10 in in diameter.

Is this the timber he first sold to C. E. Bayler? if it is he had a right to take it if not he ought to pay for it?

Certainly Richie & Jones did not think it was, they bought Baylers contract & did not claim this timber under it.

C. E. Bayler could not think so because timber down to 10 in in diameter could not be considered as second class lumber (Jones & Richie did not and they were lumber dealers) the deal from Witt to Bayler only undertook to convey this kind of timber that is first & second class as it expressly states this quality of timber are deed. when it shows that he is to pay \$5⁰⁰ per M for all first class & \$4⁰⁰ per M for all second class timber. Now is it not plain that all the 1st & 2nd grades were taken off by Richie & Jones. If Witt had sold this \$80,000 lot down to 10 in this deal to Bayler

why did he afterwards as is shown in
his deposition accept \$3⁰⁰ per ~~mt~~ for it.
Why did he make a new contract with
Bayer? Why did he request Richie
& Jones to say nothing to Harker &
Ball about it till he could make
"a new contract" with Bayer.

Defendants insists upon stating
'Q' being approved used accepted as
the correct one as it is only justice
that he should have pay for his
property of which he has wrongfully
been deprived.

J. B. Blundunship for Sept
Jan. 6. 94.

X copies to
Comm. Report

458.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

W. G. Tucker

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *15th* Monday in *February*, 1894, to answer a bill in Chancery, exhibited against *him* in our said court by *A. P. Witt*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *31st* day of *January* 1894, and in the *11th* year of the Commonwealth.

A. B. Munsey Clerk.

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 130
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 156.
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239

168

A. P. Witt

vs. { SUBPENA
 IN CHANCERY.

W. Y. Tucker

Duncan & Hyatt p. q.

To 1st February Rules 1894

Circuit Court.

Executed by deliver-
 ing a true copy of
 the within summons
 to W. Y. Tucker. This
 Feb 30 - 1894.

J. M. Weston D.S.
 for C. E. Flannery
 S. L. C.

LAWYER'S FILE COVER.

THE CASE.

Court No. Office No.

Circuit Court

Lee, Henry

A. P. Kitt

vs.
H. J. Tucker

Plff's Residence Mossy Creek, Tenn.

Deft's Residence Boon's Path, La

Am't of Claim \$ 14.00.00

Received _____ 18

Satisfied _____ 18

Forwarded to _____

for Collection.

Resides at

Instructed to

Duncan & Hyatt
Plaintiff's Attorney.

Plaintiff's Attorney.

Plaintiff's Attorney.
Jackson & Blankenship.
Defendant's Attorney.

Defendant's Attorney,

RECEIVED AND DISBURSED.

[illegible]